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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ78

Prevailing Rate Systems; Redefinition of the North Dakota and Duluth, MN, Appropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. This rule redefines Clearwater and Mahnomen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. These changes assign all blue-collar Federal employees working in Indian Health Service facilities in northern Minnesota to one FWS wage schedule.

DATES: *Effective Date:* This regulation is effective on the first day of the first applicable pay period beginning on or after March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Mark A. Allen at (202) 606–2838, e-mail *maallen@opm.gov*, or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On August 22, 2003, the Office of Personnel Management (OPM) published a proposed rule (68 FR 50727) to redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. The proposed rule had a 30-day public comment period. OPM received 3 comments: one from the Minnesota National Guard Adjutant General Office; 1 from the manager of the Minnesota Army National Guard Organizational Maintenance Shop Number Five, Detroit Lakes; and 1 from an employee representative of FWS workers at the Detroit Lakes Maintenance Shop, Becker County, MN.

The proposed rule would redefine Clearwater and Mahnomen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. Public comments supported these changes but also asked that OPM define all of Becker County, MN, to the Duluth wage area.

We proposed redefining Clearwater and Mahnomen Counties and the White Earth Indian Reservation portion of Becker County to the Duluth wage area because FWS employees who work for closely related Bemidji Area Indian Health Service (IHS) facilities in northern Minnesota are currently in two separate FWS wage areas. The Department of Health and Human Services requested that OPM redefine the North Dakota and Duluth wage areas so that blue-collar employees of its IHS facilities in northern Minnesota would be covered by one wage schedule.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that the criteria for Clearwater, Mahnomen, and Becker counties do not strongly favor defining the counties to one FWS wage area more than another. However, the IHS medical centers in northern Minnesota are in an unusual situation in that they are in a rural area that is economically and socially integrated by the local reservation system and not strongly integrated with the labor markets in either the North Dakota or Duluth FWS survey areas. It is desirable to have IHS employees aligned under one wage schedule because the area and population serviced by the medical centers serve as a unique labor market. However, there is insufficient private sector industry and FWS employment in northern Minnesota to meet OPM's regulatory requirements for establishing a separate FWS wage area for the IHS employees there. Because it is not feasible to establish a separate FWS wage area for IHS employees in northern Minnesota, the FWS employment locations must be defined to the area of application of an existing FWS wage area.

Analysis of OPM's regulatory criteria for defining FWS wage areas shows that the majority of IHS employment locations under the Bemidji Area in northern Minnesota are more closely aligned with the Duluth wage area than the North Dakota wage area. The White Earth, Red Lake, and Cass Lake Indian Health Centers are part of the Bemidji Area but their associated reservations are not currently located entirely within the Duluth wage area. The White Earth Indian Reservation occupies the northern portion of Becker County and most of Mahnomen County, while the Red Lake and Cass Lake Indian Reservations occupy the northern portions of Clearwater County. We therefore proposed that Clearwater and Mahnomen Counties be redefined from the North Dakota wage area to the Duluth wage area. We also proposed that the White Earth Indian Reservation portion of Becker County be redefined from the North Dakota wage area to the Duluth wage area. There are 11 IHS employees in Becker County and none in Clearwater or Mahnomen counties. There are several FWS employees stationed in the part of Becker County that we did not propose to define to the Duluth wage area.

The comments OPM received from Minnesota National Guard managers and employees request that all of Becker County, rather than just the White Earth Indian Reservation portion, be defined to the Duluth wage area. The reasons cited in the requests include organizational relationships in the Minnesota National Guard's Maintenance Division, the cost of living in Becker County, and an analysis of economic and salary indicators. Comments cited the fact that the Minnesota National Guard's Maintenance Division has similar facilities with similar blue-collar workforces in Detroit Lakes (Becker County), Cloquet (Carlton County), and Hibbing (St. Louis County).

We do not find a compelling reason to place all of Becker County in the Duluth wage area. Both Cloquet and Hibbing are located in the Duluth FWS

survey area while Detroit Lakes is only 26 kilometers, or 16 miles, from the North Dakota FWS survey area. Under the statutory principles for determining FWS pay, we find that pay rates for FWS employees at Minnesota National Guard facilities in Detroit Lakes, Cloquet, and Hibbing are appropriate. We find no compelling reason that FWS pay rates should be the same in Detroit Lakes as in Cloquet or Hibbing. Detroit Lakes has little linkage with the labor market in the Duluth survey area while it has a significant linkage with the North Dakota survey area. For example, commuting rates from the 2000 Census show that only 0.03 percent of the Becker County resident workforce commutes to work in the Duluth FWS survey area. In comparison, 8.8 percent of the Becker County resident workforce commutes to work in the North Dakota FWS survey area.

We believe the mixed nature of the regulatory analysis findings for Becker County, including demographic and industry patterns, indicates that the non-IHS employment locations in Becker County should remain appropriately defined to the North Dakota wage area. Because the pay of FWS employees must be based on the local cost of labor rather than the local cost of living, the local cost of living is not a factor OPM considers when defining FWS wage area boundaries.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and recommended these changes by consensus. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definitions of the North Dakota and Duluth wage areas. The affected IHS employees in Becker County must be placed on the wage schedule for the Duluth wage area on the first day of the first applicable pay period beginning 30 days after the date this final regulation is published in the **Federal Register**.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix C to subpart B, the wage area listing for the State of Minnesota is amended by revising the listing for Duluth; and for the State of North Dakota, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Minnesota

Duluth

Survey Area

Minnesota:
- Carlton
- St. Louis

Wisconsin:
- Douglas

Area of Application. Survey Area Plus

Minnesota:
- Aitkin
- Becker (Including the White Earth Indian Reservation portion only)
- Beltrami
- Cass
- Clearwater
- Cook
- Crow Wing
- Hubbard
- Itasca
- Koochiching
- Lake
- Lake of the Woods
- Mahnomen
- Pine

Wisconsin:
- Ashland
- Bayfield
- Burnett
- Iron
- Sawyer
- Washburn

* * * * *

North Dakota

Survey Area

North Dakota:
- Burleigh
- Cass
- Grand Forks
- McLean
- Mercer
- Morton
- Oliver
- Traill
- Ward

Minnesota:
- Clay
- Polk

Area of Application. Survey Area Plus

North Dakota:
- Adams
- Barnes
- Benson
- Billings
- Bottineau
- Bowman
- Burke
- Cavalier
- Dickey
- Divide
- Dunn
- Eddy
- Emmons
- Foster
- Golden Valley
- Grant
- Griggs
- Hettinger
- Kidder
- La Moure
- Logan
- McHenry
- McIntosh
- McKenzie
- Mountrail
- Nelson
- Pembina
- Pierce
- Ramsey
- Ransom
- Renville
- Richland
- Rolette
- Sargent
- Sheridan
- Sioux
- Slope
- Stark
- Steele
- Stutsman
- Towner
- Walsh
- Wells
- Williams

Minnesota:
- Becker (Excluding the White Earth Indian Reservation portion)
- Kittson
- Marshall
- Norman
- Otter Tail
- Pennington
- Red Lake
- Roseau
- Wilkin

* * * * *

[FR Doc. 04–2149 Filed 2–3–04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1941, 1943 and 1951

RIN 0560–AG81

2002 Farm Bill Regulations—Loan Eligibility Provisions

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency's (FSA) regulations for direct and guaranteed farm loans to implement provisions of the Farm Security and Rural Investment Act of 2002 (2002 Act). Specifically, the rule provides that borrowers who are current on an FSA loan before the beginning date of the incidence period of a Presidentially-declared disaster or emergency, but who receive debt forgiveness on that loan following the disaster, are eligible for direct and guaranteed operating loan (OL) assistance if all other regulatory requirements are met. It also amends the regulations for direct farm ownership (FO) loans by making applicants eligible if they participated in the business operations of a farm or ranch for at least three of the past 10 years and meet other regulatory requirements. In addition, the rule amends regulations concerning reamortization of amortized Shared Appreciation Agreement (SAA) recapture debt.

DATES: Effective March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–5199; or e-mail *kathy_zeidler@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. The Agency did not receive any adverse comments to this determination in its proposed rule published at 68 FR 17316–17320 (April 9, 2003). All FSA direct and guaranteed loan borrowers and all entities affected by this rule are small businesses according to the North American Industry Classification System and the United States Small Business Administration. There is no diversity in size of the entities affected by this rule and the costs to comply with it are the same for all entities.

This rule revises loan eligibility criteria based on requirements of the 2002 Act. Consequently, a larger number of producers will likely be eligible for FSA credit. However, because of limited funding and restrictions on loan amounts, FSA expects that this rule will have little to no impact on the number of loans made. In fiscal year 2003, the Agency made approximately 28,700 direct and guaranteed loans.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA has completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015 subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Unfunded Mandates

This rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2) and, therefore, is not subject to the requirements of the SBREFA.

Paperwork Reduction Act

The Agency's information collection requirements are not affected by the final rule.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically. However, loan application forms are available electronically for downloading through the USDA eForms Web site at *http://www.sc.egov.usda.gov*.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the

Catalog of Federal Domestic Assistance, to which the rule applies are:

10.406—Farm Operating Loans;
10.407—Farm Ownership Loans.

Discussion of the Final Rule

In response to the proposed rule published on April 9, 2003, (68 FR 17316–17320) seven respondents, including farm interest groups, a State Department of Agriculture, and individuals from five states and the District of Columbia commented. The comments involved all sections of the proposed rule and generally supported most of the changes proposed by the Agency.

Some of the comments dealt with the administrative aspects of program delivery. This rule provides requirements and guidelines, not internal Agency procedures and processes. The Agency will issue handbook amendments and internal notices to provide processes for Agency personnel to follow in administering the regulations. These internal procedural documents are available at any FSA office by request.

Eligibility After Debt Forgiveness Resulting From an Emergency

The proposed rule provided an exception to the general rule prohibiting farm loans to borrowers who have received prior debt forgiveness. As required by section 5319 of the 2002 Act, the rule proposed that FSA farm loan borrowers who received debt forgiveness on not more than one occasion resulting directly and primarily from a major disaster or emergency designated by the President on or after April 4, 1996, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) may be eligible for direct or guaranteed farm operating loans to pay annual farm or ranch operating expenses. The rule also proposed that such debt forgiveness occur within three years following the onset of the disaster or emergency.

Three commentors requested clarification of the timeline for when the exception will apply and recommended that "onset" be defined. These commentors also suggested that the second mention of the word "onset" in 7 CFR 762.120(a)(2)(iii), 1941.12(a)(8)(ii)(C) and 1941.12(b)(11)(ii)(C) be changed to "designation date" or "disaster date." The Agency agrees that the reference to "onset" is confusing and has, therefore, revised the first occurrence to state "the beginning date of the incidence period." The incidence period is defined in Agency regulations at 7 CFR part 1945, subpart A as "the specific date or dates during which a disaster occurred." For further clarification, the final rule also changes the second appearance of the word "onset" in 7 CFR 762.120(a)(2)(iii), 1941.12(a)(8)(ii)(C), and 1941.12 (b)(11)(ii)(C) to "designation."

Two commentors suggested that loan eligibility under this exception be expanded to those who apply for, rather than receive, servicing within three years of the disaster or emergency's onset. The concern was that implementation of loan servicing may take months or years, and that borrowers should not be penalized for delays if they applied for loan servicing in a timely fashion. While FSA recognizes that loan servicing takes time, it does not adopt this suggestion. The proposal would be very difficult to implement since the borrower does not apply for all types of debt forgiveness, *e.g.* debt cancellation from bankruptcy or Government loss from payment of a guaranteed loss claim. When the debt forgiveness occurs is a brighter line of reference and will result in consistent implementation of the loan making policy.

Two comments suggested that the regulation consider farmers who are not more than 30 days past due at the onset of the disaster for this exception. Commentors referred to Agency regulations wherein borrowers are considered "past due" for 30 days after a scheduled payment is not made, after which they are considered "delinquent." The Agency recently published a rule which eliminates the 30-day past due period prior to a borrower becoming delinquent. Therefore, this comment is not adopted.

One comment suggested that this exception be triggered by any type of disaster declaration. Section 5319 of the 2002 Act specifically refers to "a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)" when authorizing this exception. The Agency must follow the law in defining the applicable disaster; therefore, the comment is not adopted.

One comment suggested that the producer must have been an FSA borrower at the time of the designation. This requirement is implicit in the regulation because borrowers must have been current on their FSA debt before the disaster occurred. Therefore, no change is needed.

One comment suggested that only primary disaster counties be considered for this exception. This comment is not adopted because the Consolidated Farm and Rural Development Act section 321(a) (7 U.S.C. 1961(a)) provides that disaster areas include both primary and contiguous counties.

One comment suggested that the borrower must have been current at the time of the Presidential designation, and that this current status not be the result of the borrower having their account rescheduled or reamortized. This comment is not adopted because it would add unnecessary complexity to eligibility determinations and is too restrictive in the Agency's opinion. Primary Loan Servicing, which includes rescheduling and reamortization, is based on the borrower developing a feasible plan, and the delinquency has to be beyond the borrower's control. The suggested limitation, therefore, is not adopted.

One comment suggested that the time between the disaster and the loss be reduced from three to no more than two years. This comment is not adopted because it could often take more than two years for the total impact of a disaster to be reflected in the financial performance of the operation.

Another comment suggested that the borrower must have received an emergency loan as a result of the disaster to show that the loss was significant and contributed to the operation's need for debt forgiveness. A similar comment suggested that the borrower document that they applied for an emergency loan, Primary Loan Servicing, or Disaster Set-Aside as a result of the disaster to qualify for this exception. This comment on emergency loans is not adopted because it is too restrictive. Currently, interest rates for FSA operating loans are lower than the emergency loan rate. It is conceivable, therefore, that a farmer could obtain an operating loan rather than an emergency loan, but still be impacted by the disaster. This rule, however, does require that the borrower receive debt forgiveness, such as Primary Loan Servicing, within 10 years of the emergency designation.

Participated in the Business Operations of a Farm or Ranch

As required by section 5001 of the 2002 Act, this rule revises an eligibility requirement for FSA's direct FO loan program. Applicants may now be eligible for FO loans if they participated in the business operations of a farm or ranch for at least three years, rather than having operated a farm or ranch for that length of time. FSA proposed to define farm participation consistently with its direct OL program, with regard to acceptable farm experience and on-the-job training. The participation

requirement proposed stated that applicants must have (1) owned, managed, or operated a farm or ranch business for at least three years worth of complete production and marketing cycles; (2) have been employed as a farm manager or farm management consultant for at least three years worth of complete production and marketing cycles; or (3) participated in the operation of a farm or ranch by being raised on or working on a farm or ranch and having had significant responsibility for the day-to-day decision-making for at least three years' worth of complete production and marketing cycles. The proposed rule also included a provision limiting the three years of participation to the five years prior to the date the loan application is submitted, which is consistent with OL eligibility requirements.

Four comments suggested that the Agency delete specific reference to when the participation took place. These commentors argued that this part of the rule could adversely affect loan applicants who have significant and otherwise qualified experience, but may have been in school or the armed services for a period of time before returning to farming as a career. One of these commentors recommended that the rule be changed to three years in the last eight years. The Agency agrees that the five-year limitation is too restrictive and could exclude many otherwise eligible applicants from obtaining needed loan funds. Rather than delete specific reference to when the participation took place, because recent farming experience is still a better indicator of future success, the final rule will increase to 10 years the period of time when participation in the business operations of a farm could have occurred.

Three comments suggested that the Agency clarify what is meant by "significant responsibility for day-to-day decisions." Commentors suggested that examples of eligibility determination criteria be defined in the rule or through administrative notice or handbook, since it would be impractical to come up with an exhaustive list for what actions constitute "significant responsibility." Commentors also recommended that the rule describe the types of documentation (*e.g.*, affidavits) that will satisfy eligibility requirements. The Agency agrees that it would be impractical to come up with an exhaustive list for what actions constitute "significant responsibility;" however, some examples have been added for clarity. As suggested, FSA will issue administrative notices or handbook amendments, as necessary, to provide further guidance on these issues.

One comment recommended FSA consider findings of discrimination by the Agency when assessing farming history to determine when the applicant's participation took place. The concern was that discrimination could have forced the applicant to stop farming and, therefore, render the applicant ineligible under this policy. The Agency is increasing to 10 years the period of time when participation in the business operations of a farm could have occurred. This change should alleviate the concern since it allows for more years of no farming.

One comment suggested that the Agency require the three years of participation to have occurred after the applicant reaches age 18. This comment is not adopted because it is too restrictive and may adversely impact beginning farmers without providing any real benefit to the applicant or the Agency.

Reamortization of SAA Recapture Debt

Section 5314 of the 2002 Act authorizes FSA to consider reamortization of amortized SAA recapture debt for up to 25 years from the date of the original amortization agreement when the borrower becomes delinquent on this non-program debt. To be eligible for this reamortization, the default must be due to circumstances beyond the borrower's control, and the borrower must have acted in good faith in attempting to repay the recapture amount. Because such reamortization can be considered even when a borrower has no outstanding FSA loans, or when the SAA was triggered by all FSA loans being paid in full, FSA is amending 7 CFR 1951.901, 1951.907, 1951.909, and 1951.914 to comply with this requirement.

Comments supported the proposed 30-day notification of an incomplete application established in § 1951.907(e) for delinquent non-program borrowers who have only an SAA. No adverse comments were received; therefore, this policy is being adopted as internal Agency policy. It is not published in this rule.

As SAA amortizations are non-program debt, adverse decisions regarding these accounts are not appealable, but are reviewable by the next level Agency official according to 7 CFR 1951.454. One commentor indicated that the proposed language did not clearly refer to these review rights. The Agency concurs with the comment and has clarified the language in § 1951.909.

One commentor felt that the Agency should be able to use deferral, disaster set-aside, rescheduling, consolidation, and limited resource interest rates on SAA amortizations in addition to reamortization. The commentor stated that Congress, had that been its intent, could have confined restructure to reamortization by referring to 7 U.S.C. 1991(b)(3)(a). However, that provision of law does, in fact, include loan consolidation and rescheduling, and the 2002 Act specifically refers to reamortization only. Further, the use of limited resource rates would conflict with 7 U.S.C. 2001(e)(7)(C), which specifies how the maximum interest rate for SAA amortizations is determined. The comment, therefore, is not adopted.

One commentor referred to language in the Conference Committee Report which suggested that the Agency allow appraisal negotiation and the use of "agriculture value" when determining SAA recapture. Appraisal negotiation, whereby two or more appraisals are used to obtain a value, however, is required by statute (7 U.S.C. 2001) only for Primary Loan Servicing. A borrower who disagrees with the value determined by the appraisal for SAA recapture may appeal to the National Appeals Division. Thus, the Agency will not implement a multi-appraisal system. Current appraisal requirements fully comply with Federal and state laws, and have not caused any problems. The suggestion would increase administrative costs and burden and, thus, is not adopted.

With regard to "agriculture value" appraisals, the Agency notes that the SAA was established by Congress to protect the interest of the taxpayer. In implementing the Consolidated Farm and Rural Development Act, the Agency must ensure consistency and comply with all appraisal standards. Therefore, only market value appraisals will be used when making a determination of SAA recapture. This value is established when each SAA contract is executed, represents the true value of the property, and reflects the total appreciation the borrower has received after having debt forgiven by the Government.

List of Subjects

7 CFR Part 762

General—Agriculture, Loan programs—Agriculture.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Crops, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—Agriculture, Loan Programs—Housing and community development.

■ Accordingly, 7 CFR chapters VII and XVIII are amended as follows:

PART 762—GUARANTEED FARM LOANS

■ 1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

■ 2. Amend § 762.102(b) by adding a definition of "Presidentially-designated emergency" to read as follows:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) *Definitions.*

* * * * *

Presidentially-designated emergency. A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)

* * * * *

■ 3. Amend § 762.120 by revising paragraph (a) to read as follows:

§ 762.120 Loan applicant eligibility.

* * * * *

(a) *Agency loss.* (1) Except as provided in paragraph (a)(2) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim on:

(i) More than three occasions on or prior to April 4, 1996; or

(ii) Any occasion after April 4, 1996.

(2) The applicant may receive a guaranteed OL to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(i) Received a write-down under section 353 of the CONACT;

(ii) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(iii) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period for a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

* * * * *

PART 1941—OPERATING LOANS

■ 4. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures and Authorizations

■ 5. Amend § 1941.4 by adding a definition of "Presidentially-designated emergency" to read as follows:

§ 1941.4 Definitions.

* * * * *

Presidentially-designated emergency. A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

* * * * *

■ 6. Amend § 1941.12 by revising paragraphs (a)(8) and (b)(11) to read as follows:

§ 1941.12 Eligibility requirements.

(a) * * *

(8) *Agency loss.* (i) Except as provided in paragraph (a)(8)(ii) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

* * * * *

(b) * * *

(11) *Agency loss.* (i) Except as provided in paragraph (b)(11)(ii) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

■ 7. The authority citation for part 1943 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—Direct Farm Ownership Loan Policies, Procedures, and Authorizations

■ 8. Amend § 1943.4 by adding a definition of "participated in the business operations of a farm or ranch" to read as follows:

§ 1943.4 Definitions.

* * * * *

Participated in the business operations of a farm or ranch. An applicant has participated in the business operations of a farm or ranch if the applicant has:

(1) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycle as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production and marketing cycle; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

* * * * *

■ 9. Amend § 1943.12 by revising the introductory text in paragraphs (a)(6) and (b)(8) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

(a) * * *

(6) Have participated in the business operations of a farm or ranch for at least 3 years out of the 10 years prior to the date the application is submitted and satisfy at least one of the following conditions:

* * * * *

(b) * * *

(8) Have one or more members, constituting a majority interest in the business entity, who have participated in the business operations of a farm or ranch for at least 3 years out of the 10 years prior to the date the application is submitted and satisfy at least one of the following conditions:

* * * * *

PART 1951—SERVICING AND COLLECTIONS

■ 10. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart S—Farm Loan Programs Account Servicing Policies

■ 11. Amend § 1951.901 by revising the third sentence to read as follows:

§ 1951.901 Purpose.

* * * Shared Appreciation amortized payments (SA) may be reamortized in accordance with §§ 1951.907(e), 1951.909(c)(6) and 1951.909(e)(2). * * *

* * * * *

■ 12. In § 1951.907, remove the second sentence and revise the third sentence of paragraph (c) introductory text, redesignate paragraph (e) as (f) and add a new paragraph (e) to read as follows:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) * * * Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with paragraph (d) of this section. * * *

* * * * *

(e) The Agency will notify delinquent NP borrowers who have only SA amortization agreements within 15 days of the missed payment of their rights with regard to the debt. All items in paragraph (f)(5) of this section, with the exception of Attachments 2 or 4 of exhibit A and information for conservation contracts or debt settlement, must be submitted within 60 days of such notice for the borrower to be considered for reamortization.

* * * * *

■ 13. Amend § 1951.909 by adding a new paragraph (c)(6) and revising the heading of (e)(2) to read as follows.

§ 1951.909 Processing primary loan service program requests.

* * * * *

(c) * * *

(6) Non-Program borrowers who have only SA amortization agreements must meet the requirements in paragraph (c)(1) of this section, have acted in good faith in attempting to repay the recapture amount, and develop a feasible plan. Borrowers who are not eligible under this paragraph will be notified of the adverse decision. After review rights are provided in accordance with § 1951.454, the account will be liquidated in accordance with § 1951.468.

* * * * *

(e) * * *

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes and SA amortization agreements.* * * *

* * * * *

■ 14. Amend § 1951.914 by revising paragraphs (e) introductory text and (e)(11) to read as follows:

§ 1951.914 Servicing shared appreciation agreements.

* * * * *

(e) *Shared appreciation amortization.* Shared appreciation due under this section may be amortized to a Non-program amortized payment unless the amount is due because of acceleration or the borrower ceases farming. The amount due may be amortized as an SA amortized payment under the following conditions:

* * * * *

(11) If a borrower with an SA amortized payment also has outstanding Farm Loan Programs loan and becomes delinquent or financially distressed in accordance with § 1951.906 or if a borrower with an SA amortized payment has no outstanding Farm Loan Programs loan and becomes delinquent on the SA amortized payment, the SA payment agreement may be reamortized in accordance with § 1951.909.

* * * * *

Dated: January 29, 2004.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: January 16, 2004.

Gilbert Gonzalez,

Under Secretary for Rural Development.

[FR Doc. 04–1793 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is amending the regulation to recognize a transition

formula that will be used for allocating funds to State Offices. This action is needed due to the significant impact the use of the new 2000 U.S. Census data versus the 1990 U.S. Census data, used in previous years, will have on certain States' allocations.

EFFECTIVE DATE: February 4, 2004.

FOR FURTHER INFORMATION CONTACT: Sylvia Neal, Management Analyst, Business Program, U.S. Department of Agriculture, STOP 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, telephone (202) 720–2811, or by sending an e-mail message to *sylvia.neal@usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

Programs Affected

The Catalog of Federal Domestic Assistance numbers for the programs impacted by this action are as follows:

10.768—Business and Industry Loans, and

10.769—Rural Development Grants (RBEG) (TDG).

Paperwork Reduction Act

This final rule does not revise or impose any new information collection requirements from those previously approved by the Office of Management and Budget.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, the agency generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Final mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments, or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion

The Rural Business-Cooperative Service (RBS) is amending the regulation to recognize a transition formula that will be used for allocating funds to State Offices. The transition formula limits allocation shifts to any particular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

■ Accordingly, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

■ 1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C.; 7 U.S.C.; 1989, and 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

■ 2. Amend section 1940.589 by revising paragraph (d) to read as follows:

§ 1940.589 Rural Business Enterprise Grants.

* * * * *

(d) Transition formula. See § 1940.552(d) of this subpart. The percentage range for the transition equals 30 percent (±15%).

* * * * *

Dated: January 23, 2004.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–2265 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 1951, 1962, 1965

RIN 0560–AG50

Farm Loan Programs Account Servicing Policies—Elimination of 30-Day Past-Due Period

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations to eliminate the 30-day past-due period prior to a determination that the borrower is delinquent and clarify the use of the terms "delinquent" and "past due" with regard to direct loan servicing and offset. Because the regulation only allows debt writedown after a borrower becomes delinquent, this change would allow Farm Loan Programs (FLP) borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days.

DATES: Effective March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, Senior Loan Officer, USDA, FSA, Loan Servicing and Property Management Division, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0523; telephone (202) 690–4014; e-mail: *mike.cumpton@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act and Executive Order 13272

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. All Farm Service Agency direct loan borrowers and all entities affected by this rule are small businesses according to the North American Industry Classification System, and the United States Small Business Administration. There is no diversity in size of the entities affected by this rule and the costs to comply with it are the same for all entities. FSA stated its finding in the proposed rule at 68 FR 1170–1172, January 9, 2003, that the rule will not have a significant economic impact on a substantial number of small entities, and received no comments on this finding.

In the U.S. there are 86,000 FSA direct farm loan borrowers. In this final rule, FSA is amending its regulations to eliminate the 30-day past-due period prior to a determination that the borrower is "delinquent" and clarify the use of the terms "delinquent" and "past due" with regard to direct loan servicing and offset. Because the regulation only allows debt writedown after a borrower becomes delinquent, this change would allow Farm Loan Programs (FLP) borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days.

While this rule will change the definition of the word "delinquent" with regard to all servicing and offsets, the overall impact of the rule will be very limited because it will not affect the "90 days past due" criteria that is currently used for sending initial notices of primary loan servicing under 7 CFR part 1951, subpart S, as this requirement is statutory (7 U.S.C. 1981d).

Currently, only 906 borrowers are less than 30 days past due. With these changes, all of these borrowers would immediately be eligible for consideration of all Primary Loan Servicing options. The Agency estimates that this change will have no effect on the cost of applying for Primary Loan Servicing. Therefore, the costs of compliance from this rule are deemed not significant. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

Executive Order 12372

For reasons contained in the notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost and benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

The amendments to 7 CFR parts 1951 and 1965 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB control numbers 0560–0161 and 0560–0158 under the provisions of 44 U.S.C. chapter 35. The information collections currently approved by OMB under control number 0560–0171 include the amendment to 7 CFR part 1962 contained in this rule.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans;
10.406—Farm Operating Loans;
10.407—Farm Ownership Loans.

Discussion of the Final Rule

Currently, borrowers are considered "past-due" for 30 days after a scheduled FLP payment is not made, after which they are considered "delinquent". This is not consistent with the terminology used by FSA Farm Programs (FP) where no "past-due" period exists prior to delinquency. For consistency, FSA is amending 7 CFR part 1951, subparts C and S, 7 CFR part 1962, subpart A, and 7 CFR part 1965, subpart A to eliminate the 30-day "past-due" period prior to a borrower becoming delinquent. Because 7 CFR part 1951, subpart S only allows debt writedown after a borrower becomes delinquent, this change will allow FLP borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days. This will allow servicing to be completed earlier with no additional loss to the government, as the additional accrued interest during the 30 day period is often simply added

to the writedown amount which would have been calculated on the first day the account was "past-due". In addition, the definition of the word "delinquent" with regard to all servicing and offsets is revised for consistency. The rule does not affect the "90 days past due" criteria that is currently used for sending initial notice of primary loan servicing under 7 CFR part 1951 subpart S, as this requirement is statutory (7 U.S.C. 1981d).

In response to the proposed rule published January 9, 2003 (68 FR 1170–1172), only two comments were received. All comments were considered and are addressed as follows.

One commentor felt that it is helpful for the term delinquency to have the same definition in all FSA programs, and for this definition to agree with the common usage of the term. The commentor also felt that the use of the present "past due/delinquent" terminology (whereby a borrower who is 90 days past due is 60 days delinquent) is often confusing for both borrowers and agency personnel. The commentor also felt the earlier writedown possibility could be helpful to an operation which needs such loan restructuring to begin farm operations for a crop year. The Agency agrees.

However, as the taking of all assets is required when restructuring a delinquent account under primary loan servicing (7 CFR part 1951 subpart S), this commentor was concerned that FSA would be required to take a lien on all assets where this would not have been required in the past. The commentor suggests that FSA adopt the current requirement used when making a new loan whereby security is not required beyond 150 percent of the FSA loan. In consideration of this comment, the Agency notes the difference in making a new loan and restructuring delinquent loans. The 150 percent requirement is reasonable and protects the Government's interest when making a new, fully secured loan over a term that is commensurate with the life of the security. However, in primary loan servicing, FSA is often working with an account that is already undersecured and in serious financial difficulty. Further, chattel secured loans are almost always rescheduled over 15 years from the date of restructure, which is well beyond the useful life of most chattels. The additional security is needed to minimize the Government's risk of loss. Therefore, the commentor's suggestion on taking only 150 percent loan security at restructuring was not adopted.

Another commentor supported the proposed rule, but had several concerns and felt the change could have unintended consequences. With regard to unintended consequences, the Agency feels that it has given adequate consideration to the changes caused by this rule. It recognizes however, that all possible results of a rule cannot be considered in a program that covers over 80,000 borrowers with widely diverse financial situations. The commentors' specific concerns included the following:

1. Loan Eligibility

Under the Debt Collection Act (31 U.S.C. 3720B), FSA generally cannot make a loan to a borrower who is delinquent on a non-tax Federal debt. The commentor states that this rule would prevent a borrower from getting an FSA loan 30 days earlier. This rule does not revise loan eligibility regulations. This law is implemented by 31 CFR 285.13 which defines "delinquent status" as 90 days past due. No change was made based on this comment.

2. Primary Loan Servicing Notification and 60 Day Timeframe for a Complete Application

The commentor suggested that borrowers will not know that they may receive a writedown immediately after becoming past due, as they are not normally notified of servicing options until they become 90 days past due. The commentor also states that it is essential to allow, but not require, borrowers to apply for servicing prior to becoming 90 days past due and for them to have 60 days to apply for loan servicing after receiving a packet. The Agency agrees, but believes that the current notification procedures are adequate. In general, borrowers are informed of all servicing options, in accordance with § 331D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981d), when they are distressed (*i.e.* unable to develop a feasible plan though current), in non-monetary default, or request servicing when they are 90 days past due. After notice, they have 60 days to apply for servicing. This process need not be changed by this rule.

3. Accelerated Eligibility for Administrative Offset Under 7 CFR 1951.102(b)

The commentor stated that the proposed change could allow the Agency to begin offset during the 30 days immediately following a missed payment by the borrower. The Agency disagrees, but has amended 7 CFR 1951.102(b)(13), to require that the debt be 90 days past due for offset or in default of other obligations to be feasible. The Agency has removed the reference to "60 days delinquent". Therefore, the situation the commentor is concerned about should not occur.

4. Interaction With 7 CFR Part 1951, Subpart T (Disaster Set-Aside), Proposed Rule (67 FR 41869, June 20, 2002)

The commentor stated that the interaction between this rule, as proposed, and the above Disaster Set-Aside (DSA) proposed rule could prevent borrowers from applying for DSA immediately after they have missed a payment. The Agency agrees with this interpretation and revised its DSA regulation by final rule on September 25, 2003 (68 FR 55299–55304), to allow the Agency to accept DSA applications until the borrower becomes 90 days past due.

5. Consistency With FSA Farmer Programs (FP) and the Guaranteed FLP Program

The commentor questions the need for FLP to be consistent with FP terminology, as FP mainly administers commodity loans. They instead suggest equating the word default in the guaranteed program with the word delinquent in the direct loan program, and that "30 days" should be retained to remain consistent with the guaranteed program. The Agency continues to believe that the consistency and clarity of making the terms "past due" and "delinquent" synonymous, as supported by the other commentor, will contribute to a more consistent delivery of the FLP program. With regard to the comparison of the direct and guaranteed loan programs, FSA believes that the term "default" is used in different contexts. In the direct FLP program, the Promissory Note (Form FSA 1940–17) states that a default occurs when the borrower fails "to pay when due any debt evidenced by this note or perform any covenant of agreement under this note." Upon default, FSA must service the debt as required under its regulations and can offer many restructure options to the borrower. The use of the term "default" in the guaranteed program as being 30 days after a payment is missed simply indicates the date when a lender must bring a past due payment to the attention of FSA and begin consideration of additional servicing actions. The guaranteed lender will then offer restructure or debt servicing options based on their own policies, and in accordance with FSA regulations. The guaranteed loan policy is consistent with the practice of private sector lenders who generally do not consider

a loan in default until it is at least 30 days past due.

6. Hindrance of the Borrowers Ability To Recover From Delinquency

The commentor indicates that the use of the term "delinquent" attaches a stigma to the account and could hinder the borrower's ability to obtain or reschedule financing from private creditors. The commentor states that the 30 day past due period is much like the "golden hour" after an injury "when medical intervention has the greatest chance of success." Concerning the effect this change will have on private lenders, the Agency believes that lenders base commercial lending decisions on creditworthiness, profitability, security, and other financial data. The Agency does not believe that FSA's terminology change will affect these decisions.

List of Subjects

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—agriculture, Loan programs—housing and community development.

7 CFR Part 1962

Agriculture, Bankruptcy, Loan programs—agriculture, Loan programs—housing and community development.

7 CFR Part 1965

Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing.

■ Accordingly, 7 CFR chapter XVIII is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

■ 1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

■ 2. Amend § 1951.102 to:
■ a. Revise paragraph (b)(6);
■ b. Revise the third sentence of paragraph (b)(13), to read as follows:

§ 1951.102 Administrative offset.

* * * * *

(b) * * *

(6) *Delinquent or past-due* means a payment that was not made by the due date.

* * * * *

(13) * * * To be feasible the debt must exist and be 90 days past due or the borrower must be in default of other obligations to the Agency, which can be cured by the payment.

* * * * *

Subpart S—Farm Loan Programs Account Servicing Policies

■ 3. Amend § 1951.906 by removing the definition of "Delinquent borrower" and adding in its place the definition of "Delinquent or past-due borrower".

§ 1951.906 Definitions.

* * * * *

Delinquent or past-due borrower. A borrower who has failed to make all or part of a payment by the due date.

* * * * *

■ 4. Amend the second sentence of § 1951.907 paragraph (c) to read as follows:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) * * * FLP borrowers who are at least 90 days past due will be sent exhibit A of this subpart with attachments 1 and 2 by certified mail, return receipt requested. * * *

* * * * *

PART 1962—PERSONAL PROPERTY

■ 5. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

■ 6. Amend § 1962.40 to revise the first sentence of paragraph (b)(2) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(b) * * *

(2) In Farm Loan Programs loan cases, borrowers who are 90 days past due on their payments must receive exhibit A with attachments 1 and 2 or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. * * *

* * * * *

PART 1965—REAL PROPERTY

■ 7. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

■ 8. Amend § 1965.26 to revise the first sentence of paragraph (b)(2) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(b) * * *

(2) In Farm Loan Programs loan cases, borrowers who are 90 days past due on their payments, must receive exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. * * *

* * * * *

Dated: January 15, 2004.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: January 16, 2004.

Gilbert Gonzalez,

Under Secretary for Rural Development.

[FR Doc. 04–1792 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH32

Minor Changes to Decommissioning Trust Fund Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of December 24, 2003, for the direct final rule that was published in the **Federal Register** on November 20, 2003 (68 FR 65386). This direct final rule amended the NRC's regulations related to decommissioning trust fund provisions to correct typographical errors and make minor changes to a final rule promulgated by the NRC in December of 2002.

EFFECTIVE DATE: The effective date of December 24, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://*

ruleforum.llnl.gov). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–6219, e-mail: *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–1978, e-mail: *bjr@nrc.gov*.

SUPPLEMENTARY INFORMATION: On November 20, 2003 (68 FR 65386), the NRC published a direct final rule amending its regulations in 10 CFR part 50 related to decommissioning trust fund provisions to correct typographical errors and make minor changes to a final rule entitled "Decommissioning Trust Provisions," promulgated by the NRC on December 24, 2002 (67 FR 78332). In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become effective on December 24, 2003. The NRC did not receive any comments on the direct final rule. Therefore, this rule is effective as scheduled.

Dated at Rockville, Maryland, this 29th day of January, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 04–2240 Filed 2–3–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 4, 5, 9, 16, 375, and 385

[Docket No. RM02–16–001; Order No. 2002–A]

Hydroelectric Licensing Under the Federal Power Act; Order on Rehearing of Final Rule

Issued January 23, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing of final rule.

SUMMARY: On July 23, 2003, the Commission issued a final rule amending its regulations to establish a new hydroelectric licensing process that integrates pre-filing consultation with preparation of the Commission's NEPA document and improves coordination of the licensing process with other Federal and state regulatory processes. The final rule retained the existing traditional licensing process and the alternative licensing procedures, and established rule for selection of a licensing process. The final rule also modified some aspects of the traditional licensing process.

The Commission herein denies the requests for rehearing and grants certain requests for clarification.

EFFECTIVE DATE: The revisions implemented in this order on rehearing of the final rule are effective October 23, 2003.

FOR FURTHER INFORMATION CONTACT: John Clements, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8070.

SUPPLEMENTARY INFORMATION: Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

I. Introduction

1. In this order, the Commission addresses requests for rehearing of Order No. 2002, which amends the Commission's regulations for licensing of hydroelectric projects by establishing a new licensing process (the integrated process).[1] The final rule also retains the existing traditional licensing process[2] and the alternative licensing procedures (ALP).[3] Requests for rehearing were filed by the Hydropower Reform Coalition (HRC), Edison Electric Institute (EEI), and Western Urban Water Coalition (WUWC).[4]

II. Discussion

A. Good Cause To Approve Use of Traditional Process

2. The final rule provides that after a transition period ending July 22, 2005, the integrated process will be the default licensing process, but a potential license applicant may apply for authorization to use the traditional process or ALP.[5] The standard for granting a request to use the traditional process or ALP is "good cause shown."[6]

3. Potential applicants requesting to use the traditional process and commenters thereon are encouraged to address various criteria. These are: (1) Likelihood of timely license issuance; (2) complexity of the resource issues; (3) level of anticipated controversy; (4) relative cost of the traditional process compared to the integrated process; (5) the amount of available information and potential for significant disputes over studies; and (6) other factors believed by the requester or commenter to be pertinent.[7]

4. HRC states that it supports these criteria, but that the "good cause" standard should be specifically linked to overcoming the presumption that the integrated process is the default. Otherwise, it fears, the meaning of "good cause" and the significance of the criteria will be ambiguous. HRC requests that we define good cause to mean that use of the traditional process is more likely than the integrated process to maximize coordination of all pertinent regulatory processes, assure timely adoption and implementation of a study plan, and prevent, resolve, or narrow disputes related to the study plan and environmental protection measures.[8]

5. EEI, supported by WUWC, requests that we clarify that good cause may be shown notwithstanding that a licensing proceeding is likely to be complex and controversial. In support, EEI suggests that non-licensees will attempt to thwart requests to use the traditional process by manufacturing issues and controversies. It also reiterates comments on the notice of proposed rulemaking[9] that complexity and controversy may make the integrated process less suitable than the traditional process because the former is more collaborative in nature, and that the cost of the integrated process may be so great as to outweigh all other considerations.

6. We are not persuaded that the regulations need to be changed or clarified in this regard. The outcomes included in HRC's suggested definition may weigh in favor of a good cause finding, but we are not prepared in advance of any requests being filed to conclude that they are the only, or the most important, considerations in all possible cases. We agree with EEI that good cause may be shown notwithstanding that a license proceeding is likely to be complex or controversial, but are also not prepared to speculate on the particular

[1] 68 FR 51070 (Aug. 25, 2003); III FERC Stats. & Regs. ¶ 31,150 (July 23, 2003). Corrections to the final rule were published in the **Federal Register** at 68 FR 61742–61743 (Oct. 30, 2003), 68 FR 63194 (Nov. 7, 2003), and 68 FR 69957 (Dec. 16, 2003). The integrated process regulations are found in 18 CFR part 5.

[2] The traditional licensing process regulations are found in 18 CFR parts 4 and, for relicensing, part 16.

[3] The alternative licensing procedures are found at 18 CFR 4.34(e).

[4] WUWC is composed of various urban water utilities in several western states.

[5] Until July 22, 2005, a potential applicant may elect to use either the traditional or integrated process, but must, as now, receive authorization to use the ALP.

[6] 18 CFR 5.3.

[7] 18 CFR 5.3(c)(1)(ii).

[8] HRC Request at pp. 4–5.

[9] 68 FR 13988 (Mar. 21, 2003); IV FERC Stats. & Regs. ¶ 32,568 (Feb. 20, 2003).

circumstances of future applications in which that would be the case.

B. Pre-Application Document

7. The first step in the integrated process is the potential applicant's notification of intent (NOI) to file a license application and the filing and distribution of the Pre-Application Document (PAD).[10] The PAD is a tool for identifying issues and information needs, including for scoping under the National Environmental Policy Act (NEPA),[11] developing study requests and study plans, and providing information for the Commission's NEPA document. It is a precursor to the environmental exhibit of the license application. It should include all engineering, economic, and environmental information relevant to licensing the project that is reasonably available when the NOI is filed and can be obtained with the exercise of due diligence.

8. Because the PAD plays an essential role in the integrated process, HRC requests that we incorporate into the regulations disincentives for filing and distributing a deficient PAD. Specifically, HRC recommends that a PAD be defined as deficient if the potential applicant fails to properly summarize existing information; show reasonable cause for any content deficiencies; or exercise due diligence in obtaining and presenting existing, relevant materials. Sanctions for a deficient PAD would include: Forfeiture of the potential applicant's right to contest additional information requests (AIRs), a reduced license term, or imposition of preliminary environmental protection measures during the term of annual licenses that may be issued.

9. We decline to adopt this recommendation. HRC's proposed definition largely restates the due diligence requirement that is already in the regulations.[12] Its proposed sanctions miss the mark. There is no incentive to prepare a poor quality PAD, as that would only result in additional data gathering or study requirements in the Commission-approved study plan. In any event, the process leading to the study plan should cure any such deficiencies, which makes the matter of post-application AIRs irrelevant. Forfeiture of a potential applicant's opportunity to contest an AIR would simply impair the Commission's ability to evaluate the merits of the request. Reducing the license term and imposing interim environmental measures are also not relevant to the curing of any deficiencies. As a general matter moreover, we are disinclined to establish a regime of sanctions before we have gained experience in the practical implementation of this new requirement.[13]

C. Dispute Resolution Panel

10. The final rule establishes a formal study dispute resolution process in which resource agencies or Indian tribes with mandatory conditioning authority may dispute any element of the Commission-approved study plan that pertains to the exercise of its conditioning authority. This dispute is submitted to an advisory panel of technical experts. The advisory panel convenes a technical conference before it makes its recommendation, which any interested party may attend, and at which the panel receives additional information and arguments in its discretion before it makes a recommendation based on the record to the Director of the Office of Energy Projects. The Director then resolves the dispute.[14]

11. In recognition of the fact that the potential applicant bears the burden of conducting any studies required in the approved study plan, we afforded it the right to submit comments and information to the advisory panel. This occurs prior to the technical conference.[15]

12. HRC argues that it is unfair and unlawful to grant a potential license applicant this right while other interested entities that are not parties to the dispute may only make submissions if requested to do so by the panel. HRC states that the only apparent reason for the policy is to reduce the process burden, which it contends is not a logical reason for the distinction between potential applicants and others. It adds that the policy will bias the Director's decision in favor of the potential license applicant. In support, HRC notes that the Administrative Procedures Act (APA) generally requires that all interested parties must be given an opportunity to submit facts and arguments,[16] and that the courts have held that the APA should be construed expansively so that the record does not reflect only the views of the project proponent. HRC therefore recommends that we modify Section 5.14(i) to permit any interested party to make a written filing regarding a formal dispute.

13. We decline to make the requested modification. The formal dispute resolution process applies only to disputes between the Commission staff and agencies or Indian tribes with mandatory conditioning authority that relate to the impact of the study plan on the ability of those entities to exercise their statutory authorities. Although other participants in the process may be interested in the outcome of that dispute, the potential applicant clearly has much more at stake because they bear the expense of implementing the study plan. These other participants also do not have the burden that conditioning agencies have to support a condition with substantial evidence.[17]

14. We disagree as well with HRC's suggestion that the formal dispute resolution process excludes other interested entities from making submissions with respect to matters in dispute. The formal process applicable to disputes filed by conditioning agencies occurs only after all entities with an interest in the potential application have had the opportunity to submit information and arguments in support of their study requests during the development of the Commission-approved study plan, which includes meetings for the specific purpose of resolving differences. Any disputes that parties without conditioning authority have with the potential applicant are resolved in that context. As noted, these other parties enjoy an additional opportunity to participate in the technical conference during any formal dispute resolution process that may be initiated with respect to their issues by an entity with mandatory conditioning authority. We anticipate that members of dispute resolution panels will act reasonably when deciding how such participation should be structured.

15. As to assertions of a biased record, the advisory panel will have before it the submissions of the disputing agency and the potential applicant, plus all other information filed during the proceeding. Under these circumstances, we are confident that the panel will

[10] *See* 18 CFR 5.5 and 5.6.

[11] 42 U.S.C. 4321, *et seq.*

[12] 18 CFR 5.6(b)(1)(ii).

[13] HRC also points out that the PAD is required to be distributed to, among others, local governments (18 CFR 5.6(a)(1), but the NOI is not (18 CFR 5.5(c)). Since these documents are to be distributed together, HRC recommends that the distribution lists be reconciled. We agree, and the correction has been made (*see* n.1).

[14] 18 CFR 5.14.

[15] 18 CFR 5.14(j).

[16] HRC cites APA section 554(c), 5 U.S.C. 554(c), which states that agencies must "give all interested parties an opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of amendments when time, the nature of the proceeding and the public interest permit."

[17] This is fully consistent with APA section 554(c)'s language stating that the manner in which parties can participate can be defined in light of the nature of the proceeding and time constraints.

have all of the information needed to make an unbiased recommendation.

D. Finality of Study Plan Orders

16. EEI contends that study plan orders are final Commission orders binding on potential license applicants and are therefore subject to immediate rehearing and judicial review. EEI adds that study plan orders are inequitable because they are not binding on other parties, apparently in the sense that other parties can make subsequent requests to modify the required studies or make additional information gathering and study plan requests,[18] or may require additional information in the context of their exercise of independent statutory authority, such as acting on applications for water quality certification under section 401 of the Clean Water Act (CWA).[19] EEI states that the Commission should make explicit provisions for rehearing and judicial review of study plan orders or, preferably, modify the rule by making study plan orders advisory.

17. Study plans are not advisory, and EEI's request to consider them as such is denied. As to EEI's other arguments, once the Director makes a study plan determination pursuant to the authority delegated to the Director by the Commission in newly adopted section 375.308(a)(i),[20] that determination may then be appealed to the Commission in a request for rehearing pursuant to section 375.301(a) and 385.713 of the Commission's regulations.[21] Any such occurrence should however be exceedingly rare. The study plan development process was designed to ensure that study requests are subject to established standards, that parties work together to resolve differing opinions, and that the Director's order establishing the study plan rests on the standards and the complete record developed by the participants with the advice and assistance of Commission staff. Whether judicial review of the Commission's decision on rehearing is appropriate is a matter to be determined by the court from which judicial review is sought.

E. Additional Information Requests

18. The rule makes no express provision for parties to make additional information requests following the filing of a license application. Rather, it concludes that the multiple opportunities to request information and studies and to resolve study disputes during the pre-application phase of the proceeding will ensure that the application will include all information needs.[22]

19. HRC states that as a result the last opportunity for new information requests will be in response to the preliminary license proposal (or draft license application, should the potential applicant elect to file one), but that there could be significant changes between the preliminary license proposal and the filed application that would require additional information. This is possible, but unlikely. In any event, and as we previously explained, the possibility of material changes in circumstances has always been inherent in the license application process, and the Commission has always exercised its authority to require additional information in appropriate cases, on its own initiative or in response to the request of a party.[23]

20. Section 5.15(f)[24] provides that requests for new information gathering or studies in response to a potential applicant's updated study report describing its overall progress in implementing the study plan and schedule must demonstrate "extraordinary circumstances." HRC states that this term, which is not defined in the regulations, should be defined as "factors that could not have been predicted or foreseen under the circumstances, especially those where there is a change in regulation or law."[25]

21. We agree in general that unforeseeable events, including changes in laws or regulations, may constitute extraordinary circumstances with respect to identifying information needed for an analysis of a license application. We do not however wish to limit our discretion in this regard to the occurrence of such events, and the mere fact that an event was not foreseeable does not establish a connection between it and a request for additional information. We expect requesters to fully explain the circumstances supporting their requests, and will act reasonably when we consider them.

F. Draft NEPA Documents

22. The Commission sometimes issues in non-controversial cases an environmental assessment (EA) that is not preceded by a draft EA. The integrated process regulations reflect that fact by establishing slightly different procedures depending on whether or not a draft EA is needed.[26] HRC does not state that this practice is unlawful, but suggests that it is generally inconsistent with the thrust of NEPA and the Council on Environmental Quality's (CEQ) regulations, as well as our commitment to attach draft license articles to environmental documents by reducing the parties' opportunities for review and comment. HRC adds that the opportunity to comment on draft EAs can result in changes and corrections that reduce or eliminate requests for rehearing. HRC concludes that a draft EA should be omitted, if ever, only in the most benign of cases. It recommends that we eliminate sections 5.24 and 5.25, and instead include a section which defines limited circumstances under which a draft EA will not be required, based on a list of factors found in CEQ's regulations pertaining to whether or not a proposed action requires an EIS.

23. There is no need to make the changes recommended by HRC. The Commission has exercised its discretion in this regard very conservatively and the integrated process will enhance the parties' opportunities for input on and review of the record upon which the Commission makes its decisions. Sections 5.24 and 5.25 are moreover purely procedural provisions that set forth steps in the integrated process. They have no bearing on the decision of whether or not a draft EA is required.

G. Other Matters

1. Production and Distribution of the PAD

24. HRC believes there may be an inconsistency between the document availability requirements of section 5.2(a) and the PAD distribution requirements of section 5.6. Section 5.2(a) states that a potential applicant must make the PAD and any materials referenced therein available for public inspection at its principal place of business or other accessible location, and to send the same to any requester at the reasonable cost of reproduction and postage. Federal and State fish and wildlife agencies and Indian tribes are, however, required to be provided with these materials without charge.

25. Section 5.6(a) requires the PAD to be distributed to Federal, State, and interstate resource agencies, Indian

[18] Such requests could be made in response to the potential applicant's initial or updated study reports provided for in section 5.15 or in response to the potential applicant's preliminary licensing proposal, as provided for in section 5.16.

[19] 33 U.S.C. 1341.

[20] 18 CFR 375.308(aa)(i).

[21] 18 CFR 375.301(a) and 385.713.

[22] 68 FERC at p. 51,094, III FERC Stats. & Regs. at pp. 30,731–732.

[23] *Id.*

[24] 18 CFR 5.15(f).

[25] HRC Request at p. 19.

[26] *See* 18 CFR 5.24 (applications not requiring a draft NEPA document) and 5.25 (applications requiring a draft NEPA document).

tribes, local governments, and members of the public likely to be interested in the proceeding. Section 5.6(c)(2) provides that sources of information referenced by, rather than included in, the PAD, such as scientific studies and voluminous data, must be provided upon request to recipients of the PAD. HRC is uncertain why the requirements of these sections are not identical, and requests that we clarify that both the PAD and materials referenced therein are available to all recipients of the PAD at no charge.

26. We are granting the requested clarification. The document availability requirements of section 5.2(a) reflect the requirement of FPA section 15(b)(2)[27] that a potential new license applicant maintain a "library" of relicensing materials which interested entities may examine and from which they may request documents to be reproduced at cost. It also reflects in part our previously existing requirement that the materials from the library be provided to certain Federal and State agencies at no charge.[28]

27. The PAD contents are related to the relicensing library contents, but are not identical. The PAD and materials referenced therein are to be distributed at no charge to the recipient, as is ordinarily the case with any other document required to be filed with the Commission or served upon other entities. This is consistent with our discussion of the industry's cost concerns in the final rule, wherein we reduced the content requirements for the PAD by permitting supporting materials to be referenced, and encourage potential applicants to take advantage of technological advances by arranging for distribution over the Internet, through CD–ROMs, or by other electronic means.[29] To the extent a potential license applicant elects to include in its relicensing library any materials not required to be included in or referenced in the PAD (or otherwise required to be served on the parties), the potential applicant may charge entities other than Federal and State fish and wildlife agencies and Indian tribes reasonable costs of reproduction and postage.

2. Water Quality Certification

28. The regulations provide that an application to amend a license or an amendment to a pending license application is required to include a new application for a water quality certification if "the amendment would have a material adverse impact on the water quality in the discharge from the project."[30] HRC states that this provision is inconsistent with *Alabama Rivers Alliance* v. *FERC*.[31] The court there interpreted the requirement of CWA section 401(a)(1)[32] that a state water quality certification must be provided or waived for "any activity" which "may result in a discharge" into navigable waters to include a license amendment which would result in an increase in the discharge from the project turbines. HRC states that we should modify our regulations accordingly. HRC overlooks however the fact that the Court found that the amendment in that case would result in the release of substantially increased volumes of water with low dissolved oxygen levels.[33] We do not interpret the Court's ruling to hold that any increase in a project's discharge, however insignificant and innocuous, requires a new application for water quality certification. The Court moreover noted that the Commission's orders in the case did not address the applicability of the material adverse impact regulation to the licensee's amendment application,[34] and stated that its decision was based solely on its interpretation of the discharge requirement of section 401(a)(1).[35]

3. Cooperating Agencies Policy

29. In the NOPR we proposed to reverse our policy that agencies which have been cooperating agencies for purposes of preparing a NEPA document may not thereafter intervene in a proceeding. In the final rule we concluded that the proposed policy change would violate the prohibitions of the APA and case law against *ex parte* communications.[36]

30. HRC concedes that our analysis in the final rule was correct, but asserts that our rules should include affirmative procedures for coordinating preparation of the Commission's NEPA document with the regulatory processes of other agencies in the absence of a cooperating agency agreement.

31. We conclude that additional regulations are not needed. The integrated process rules provide ample opportunity for such coordination. In fact, the regulations are premised on the active participation of all entities interested in a license application from the time the NOI and PAD are filed. In particular, the integrated process provides for the development with the participation of other agencies a process plan and schedule and a Commission-approved study plan designed to maximize the likelihood that it will produce all the information needed by all agencies with conditioning authority for the proposed project.[37]

4. Timing of Request for Water Quality Certification

32. Some entities have requested clarification of the filing deadline for license applicants to file a request for water quality certification pursuant to CWA section 401. In the integrated, traditional, and alternative processes, effective for applications filed on or after October 23, 2003, the water quality certification application must be filed no later than 60 days following issuance by the Commission of the notice requesting terms and conditions. In the integrated and traditional processes that will also be the notice that the application is ready for environmental analysis.[38] Under the alternative procedures there may not be a specific notice that the application is ready for environmental analysis, but the notice requesting terms and conditions serves the same function.[39]

III. Information Collection Statement

33. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[40] OMB approved the final rule issued in Order No. 2002 on October 28, 2003. No changes have been made to the information collection requirements in this order on rehearing.

IV. Environmental Analysis

34. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[41] Included in the

[27] 16 U.S.C. 808(b)(2).

[28] 18 CFR 16.7(e)(3).

[29] 68 FR 51077; III FERC Stats. & Regs. at p. 30,702.

[30] 18 CFR 4.34(b)(5)(iii). Prior to the final rule, this provision was located at 18 CFR 4.38(f)(7).

[31] 325 F.3d 290 (D.C. Cir. 2003).

[32] 33 U.S.C. 1341(a)(1).

[33] 325 F.3d at p. 299.

[34] *Id.* at p. 295, n.6.

[35] *Id.* at p. 296.

[36] 68 FR 51099–51100; III FERC Stats. & Regs. at pp. 30,740–741.

[37] Development of the study plan essentially encompasses all steps from filing and distribution of the NOI and PAD through completion of any needed formal dispute resolution (18 CFR 5.1 through 5.14).

[38] See 18 CFR 4.34(b)(5) (traditional and alternative processes) and 18 CFR 5.23(b) (integrated process). *See also* discussion at 68 FR 51095–51096; III FERC Stats. & Regs. at p. 30,735.

[39] *See* 18 CFR 4.34(b)(5)(ii).

[40] 5 CFR part 1320.

[41] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Reg. Preambles 1986–1990 (Dec. 10, 1987).

exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended. This rule is clarifying and procedural in nature and therefore falls under the exceptions. Consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

35. The Regulatory Flexibility Act of 1980 (RFA)[42] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if a rule would not have such an effect. The Commission certifies that this rule does not have such an impact on small entities.

VI. Document Availability

36. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

37. From FERC's home page on the Internet, this information is available in eLibrary. The full text of this document is available in eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

38. User assistance is available for eLibrary and the FERC's website during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VII. Effective Date

39. This order makes no changes to the final rule, which became effective on October 23, 2003. Because no changes were made, the provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this order.

[42] 5 U.S.C. 601–612.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–2223 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 97N–484R]

Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; correction

SUMMARY: The Food and Drug Administration (FDA) is correcting an interim final rule that published in the **Federal Register** on January 27, 2004 (69 FR 3823). The interim final rule excepted human dura mater and human heart valve allografts, currently subject to application or notification requirements under the Federal Food, Drug, and Cosmetic Act from the scope of the definition of "human cells, tissues, or cellular or tissue-based products (HCT/P's)" subject to the registration and listing requirements contained in 21 CFR Part 1271. That definition became effective on January 21, 2004. The interim final rule published with some errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the FR Doc. 04–1733, appearing on page 3824 in the **Federal Register** of Tuesday, January 27, 2004, the following corrections are made:

1. On page 3824, in the **DATES** section, by removing the sentence "The compliance date is March 29, 2004."

2. On page 3824, under **SUPPLEMENTARY INFORMATION** in the I. Background section, the phrase "FDA understands that many establishments may have reasonably expected FDA to delay the effective date of this provision again, since the donor suitability and GTP rules are not yet finalized" is revised to read:

"FDA understands that many establishments may have reasonably expected FDA to delay the effective date of this provision again, since the donor suitability and GTP rules are not yet finalized. Accordingly, FDA expects that affected firms will be in compliance with these requirements by March 29, 2004, and not on January 21, 2004, the effective date of the definition regulation."

Dated: January 29, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–2312 Filed 1–30–04; 3:49 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9105]

RIN 1545–BC17

Changes in Computing Depreciation; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document corrects final and temporary regulations (TD 9105) that were published in the **Federal Register** on January 2, 2004 (69 FR 5). The document contains regulations relating to a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa).

DATES: This correction is effective January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Sara Logan, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9105) that is the subject of this correction is under section 446(e) of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9105) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9105) that was the subject of FR. Doc. 03–31820, are corrected as follows:

1. On page 6, column 1, in the preamble, paragraph 3, line 3, the

language "T.C.Memo. 2003–75, the Tax Court" is corrected to read "T.C. Memo. 2003–75, the Tax Court".

§ 1.167(e)–1T [Corrected]

■ 2. On page 8, column 1, § 1.167(e)–1T, paragraph (e), last line in the paragraph, the language "expires on or before January 2, 2007" is corrected to read "expires on or before December 29, 2006".

§ 1.446–1T [Corrected]

■ 3. On page 12, column 2, § 1.446–1T, paragraph (e)(4)(iii), line 3, the language "January 2, 2007." is corrected to read "December 29, 2006.".

§ 1.1016–3T [Corrected]

■ 4. On page 12, column 3, § 1.1016–3T, paragraph (j)(3), line 2, the language "expires on or before January 2, 2007." is corrected to read "expires on or before December 29, 2006.".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–2296 Filed 2–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: During 2004 the Parole Commission will carry out a pilot project to study the feasibility of conducting parole release hearings through video conferences between an examiner at the Commission's office and prisoners at selected Bureau of Prisons's institutions. In order to provide notice of this project, the Commission is promulgating an interim rule that provides that a parole release hearing may be conducted through a video conference with the prisoner. The Commission is also promulgating several conforming rule changes, including an amendment to the rule at 28 CFR 2.72 that eliminates the provision that an initial hearing for a District of Columbia offender is conducted "in person" before a Commission hearing examiner.

DATES: Effective date: March 5, 2004. Comments must be received by May 4, 2004.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission's hearing examiners travel to more than 60 locations of Federal correctional facilities to conduct parole release and revocation hearings. As the number of parole-eligible prisoners drops in the Federal prison system, the Commission is expending considerable resources in conducting hearings for a small number of prisoners at facilities that are difficult to reach. Therefore, the Commission is looking for ways to reduce travel costs and conserve the time of its hearing examiners. Conducting some parole release hearings through video conferences may be one procedure that will enhance the Commission's ability to make the most efficient use of limited financial and staff resources without detracting from the prisoner's opportunity for a fair parole hearing. Video conference technology has improved considerably since the Commission last considered holding hearings by video conference, and the Commission expects that the prisoner's ability to effectively participate in the hearing will not be diminished by the use of this procedure.

The Commission is undertaking a pilot project with the Federal Bureau of Prisons to conduct some parole release hearings through a video conference between a hearing examiner at the Commission's office in Chevy Chase, Maryland and the prisoner incarcerated in a Bureau facility. During 2004 the Commission intends to use 12 institutions for the project and expects that the number of hearings conducted under the project will not exceed 180 hearings, less than 10% of the parole release hearing caseload. The pilot project will only extend to parole release hearings (including rescission hearings) conducted in Bureau facilities. Under the project, the Commission will not use video conferencing for revocation hearings.

The Commission is promulgating an interim rule on this subject to give notice of the pilot project and the variance from the agency's traditional hearing practice, and is providing an extended opportunity for the public to comment on the use of video conferencing for parole hearings. The interim rule is added at 28 CFR 2.25. For most cases under the Commission's jurisdiction, the Commission could proceed with the project without raising any question concerning compliance with the agency's current rules. But the present rule at 28 CFR 2.72(a), which states that the prisoner appear "in person" before a Commission hearing examiner, could be interpreted to require the physical presence of the prisoner before the hearing examiner in order to conduct an initial hearing for a D.C. Code offender. Therefore, the Commission is amending this rule to eliminate the provision for an "in person" appearance. A corresponding change is made to the rule at 2.75(d). The Commission is also amending a list of rules for U.S. Code offenders that are implemented for D.C. Code offenders to include the interim rule at § 2.25.

Implementation

The amended rule will take effect March 5, 2004, and will apply to parole determination hearings for Federal and District of Columbia offenders.

Executive Order 12866

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to section 804 (3) (c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Interim Rule

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203 (a) (1) and 4204 (a) (6).

■ 2. Section 2.25 is added to read as follows:

§ 2.25 Hearings by video conference.

Parole determination hearings, including rescission hearings, may be conducted by a video conference between the hearing examiner and the prisoner.

§ 2.72 [Amended]

■ 3. Amend § 2.72(a) as follows:
■ a. Remove the first sentence; and
■ b. Remove "The" from the beginning of the second sentence and add in its place "At the initial hearing the".

§ 2.75 [Amended]

■ 4. Amend § 2.75(d) by removing "in-person" from the second sentence.

■ 5. Amend § 2.89 by adding the following entry in numerical order to read as follows:

§ 2.89 Miscellaneous provisions.

* * * * *

2.25 (Hearings by video conference)

* * * * *

Dated: January 28, 2004.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 04–2105 Filed 2–3–04; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD07–03–110]

RIN 1625–AA01

Special Anchorage Area; St. Lucie River, Stuart, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is extending the Special Anchorage Area that begins on the Okeechobee Intracoastal Waterway between mile markers 7 and 8 on the St. Lucie River in Stuart, Florida, to include 17 additional moorings. This rule will improve safety for vessels anchoring within and transiting through this high traffic area and also reduce negative impacts on the ecosystem by providing a safer designated area for vessels to anchor.

DATES: This regulation becomes effective on March 5, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–03–110] and are available for inspection or copying at the Seventh Coast Guard District, Room 406, 909 SE. First Avenue, Miami, FL, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Embres, Seventh Coast Guard District, Aids to Navigation Branch, at (305) 415–6750.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 1, 2003, we published a notice of proposed rulemaking (NPRM) entitled Special Anchorage Area; Okeechobee Waterway, St. Lucie River, Stuart, FL in the **Federal Register** (68 FR 45190). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The City of Stuart has asked the Coast Guard to extend the current Special Anchorage Area that begins on the Okeechobee Intracoastal Waterway between mile markers 7 and 8 on the St. Lucie River. The City would like to extend the anchorage area by adding 9.73 acres and installing 17 additional moorings. This rule is intended to reduce the risk of vessel collisions by enlarging the current anchorage area and to provide notice to mariners of the additional 9.73 acres. This rule allows vessels not more than 65 feet in length to anchor without exhibiting anchor lights as required by the navigation rules at 33 CFR 109.10. The City of Stuart has coordinated with the Florida Department of Environmental Protection (DEP) regarding this proposal. The DEP determined that properly managed mooring and anchorage fields located in appropriate areas will encourage vessels to utilize them for safety purposes, and, as a side benefit, the ecosystem will incur less detrimental impact.

Discussion of Comments and Changes

The latitude and longitude positions defining the Special Anchorage Area were correct in the Notice of Proposed Rule Making (NPRM), but were not in the proper order and have since been corrected.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations, to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, actions concerning regulations that significantly affect energy supply, distribution, or use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. Under figure 2–1, Paragraph (34)(f), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The Authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g). Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 110.73c is amended by revising the text before the note to read as follows:

§ 110.73c Okeechobee Waterway, St. Lucie River, Stuart, FL.

The following is a special anchorage area: Beginning on the Okeechobee Intracoastal Waterway between mile marker 7 and 8 on the St. Lucie River, bounded by a line beginning at 27°12′06.583″ N, 80°15′33.447″ W; thence to 27°12′07.811″ N, 80°15′38.861″ W; thence to 27°12′04.584″ N, 80°15′41.437″ W; thence to 27°11′49.005″ N, 80°15′44.796″ W; thence to 27°11′47.99″ N, 80°15′44.78″ W; thence to 27°11′42.51″ N, 80°15′49.36″ W; thence to 27°11′41.40″ N, 80°15′47.70″ W; thence to 27°11′40.44″ N, 80°15′44.64″ W; thence to 27°11′43.49″ N, 80°15′40.74″ W; thence to 27°11′46.82″ N, 80°15′37.9647″ W; thence to 27°11′47.881″ N, 80°15′38.271″ W; thence back to the original point. All coordinates reference Datum NAD:83.

* * * * *

Dated: January 16, 2004.

Fred M. Rosa, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 04–2085 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–005]

Drawbridge Operation Regulations; Corpus Christi—Port Aransas Channel—Tule Lake, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tule Lake Vertical Lift Span Highway and Railroad Bridge across the Corpus Christi—Port Aransas Channel, mile 14.0, at Corpus Christi, Nueces County, TX. This deviation allows the bridge to remain closed to navigation on two days. The deviation is necessary to replace haul ropes on the drawbridge.

DATES: This deviation is effective from 7 a.m. on Friday, February 27, 2004, through 7 a.m. on Sunday, February 29, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Marcus Redford, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Port of Corpus Christi Authority has requested a temporary deviation in order to remove and replace the haul ropes of the Tule Lake vertical lift span bridge across Corpus Christi—Port Aransas Channel, mile 14.0 at Corpus Christi, Nueces County, Texas. The replacement of the haul ropes will bring the bridge into compliance with the American Society of Mechanical Engineers guidelines. This temporary deviation will allow the bridge to remain in the closed-to-navigation position continuously for 48 hours from 7 a.m. on Friday, February 27, 2004, through 7 a.m. on Sunday, February 29, 2004.

The vertical lift span bridge has a vertical clearance of 9.0 feet above mean high water, elevation −1.0 feet Mean Sea Level and 11.0 feet above mean low water, elevation −1.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of oil tankers and tows with barges. There is no recreational pleasure craft usage at the bridge site. Due to prior experience, as well as coordination with water way users, it has been determined that this two-day closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 850 times per month. The bridge opens on signal as required by 33 CFR 117.5. The bridge will not be able to open for emergencies during the closure period. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 27, 2004.

Marcus Redford,

Bridge Administrator.

[FR Doc. 04–2232 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–002]

RIN 1625–AA09

Drawbridge Operation Regulation; East Pascagoula River, Pascagoula, MS

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the draw of the U.S. 90 bascule span bridge across the East Pascagoula River, mile 1.8 at Pascagoula, Jackson County, Mississippi. A replacement bridge has been constructed and the existing bridge has been removed. Since the bridge has been removed, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective February 4, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Philip Johnson, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Public comment is not necessary since the purpose of the affected regulation is to control the opening and closing of a bridge that has been removed.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register** for the same reasons stated in the preceding paragraph.

Background and Purpose

The State of Mississippi (Department of Transportation) has constructed a bridge of modern safe design to replace the existing bascule span bridge. The bascule span bridge that had previously serviced the area has been removed. The regulation governing the operation of the swing bridge is found in 33 CFR 117.682. The purpose of this rule is to remove 33 CFR 117.682 from the Code of Federal Regulations.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule removes a regulation that is obsolete because the bridge it governs no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no impact on any small entities because the regulation being removed applies to a bridge that no longer exists.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.682 [Removed]

■ 2. Section 117.682 is removed.

Dated: January 27, 2004.

R.F. Duncan,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04–2233 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–113]

RIN 1625–AA00

Security Zone; Salem and Hope Generating Stations, Delaware River, Salem, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone in the Captain of the Port, Philadelphia, PA zone, immediately adjacent to the nuclear power facility at Salem and Hope Creek Generating Stations. This zone is needed to ensure public safety and security from subversive or terrorist acts. This rule is intended to prevent terrorist attacks against nuclear power facilities by denying entry into this zone unless authorized by the Captain of the Port, or their designated representative.

DATES: This rule is effective March 5, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD05–03–113, which is available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147

between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Doreen Moore, Coast Guard Marine Safety Office Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 15, 2003 we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Salem and Hope Generating Stations, Delaware River, Salem, NJ" (68 FR 53935). We received two letters commenting on this proposed rule. Both letters requested a public hearing. After considering the comments, the COTP Philadelphia decided to not hold a public hearing.

In addition the following temporary final rule was published in the **Federal Register:**

"Security Zone; Salem and Hope Generating Stations, Delaware River, Salem, NJ" (68 FR 32996, June 3, 2003). This temporary final rule established a security zone around the Salem and Hope Generating Stations, Delaware River, Salem, NJ. The original effective period of the temporary final rule was to expire at 5 p.m. (EST) on January 24, 2004. The effective period has been extended through March 4, 2004.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect vessels from damage, injury, or terrorist attack.

The Captain of the Port of Philadelphia has determined that this security zone is necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

Discussion of Comments

During the public comment period we received two letters. Both letters expressed concern that the security zones would exclude kayayers from access to paddle in specific areas on the Susquehanna River. Each respondent also requested a public hearing to discuss the proposed rule.

The Captain of the Port of Philadelphia has carefully weighed security concerns versus public access concerns in the decision to establish this security zone. The permanent zone will provide a clear area in which to detect persons or vessels while providing for traditional use outside of the security zone. This final rule remains unchanged from the proposed rule. A public meeting was considered, however given the number of requests and the need for increased security around the nuclear facility, no public hearing was held.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). No changes have been made to the rule.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. There is ample room for vessels to navigate around the security zone and the Captain of the Port may allow vessels to enter the zone, on a case-by-case basis with the express permission of the Captain of the Port of Philadelphia or their designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The zone is limited in size and leaves ample room for vessels to navigate around the zone. The zone will not significantly impact commuter and passenger vessel traffic patterns; the vessels may be allowed to enter the zone on a case-by-case basis, with the express permission of the Captain of the Port of Philadelphia or their designated representative.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as none were identified that will be affected by the final rule.

Vessel traffic counts indicate the waterway users will continue to have the same access to the waterway as in the past, with the exception of a remote small area surrounding the waterfront near the Salem and Hope Generating Stations.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard Marine Safety Office Philadelphia in writing at the address under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, from further environmental documentation.

We have considered waterside access constraints around the security zone and have determined the public can safely transit the affected waterways around the security zone, without significant impact on the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.553 to read as follows.

§ 165.553 Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, New Jersey.

(a) *Location.* The following area is a security zone: the waters of the Delaware River in the vicinity of the Salem and Hope Creek Generation Stations bounded by a line drawn from a point located at 39°28′08.0″ N, 075°32′31.7″ W to 39°28′06.5″ N, 075°32′47.4″ W, thence to 39°27′28.4″ N, 075°32′15.8″ W, thence to 39°27′28.8″ N, 075°31′56.6″ W, thence to 39°27′39.9″ N, 075°31′51.6″ W, thence along the shoreline to the point of 39°28′08.0″ N, 075°32′31.7″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zones must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia, or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: January 23, 2004.

Liam J. Slein,

Commander, U.S. Coast Guard, Acting Captain of the Port Philadelphia.

[FR Doc. 04–2306 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Philadelphia 03–003]

RIN 1625–AA00

Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is continuing a temporary security zone on the waters adjacent to the Salem and Hope Creek Generation Stations. This security zone is needed to protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: Effective January 24, 2004. Section 165.T05–078, added at 68 FR 32998, June 3, 2003, effective from 5 p.m. EDT on May 13, 2003, to 5 p.m. EST on January 24, 2004, as amended by this rule is effective through March 4, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP Philadelphia 03–003 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Doreen Moore at Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

It took longer to resolve issues related to the final rule that will create a permanent security zone in this area than originally expected at the time the last temporary final rule was issued. That final rule, entitled "Security Zone; Salem and Hope Generating Stations, Delaware River, Salem, NJ", appears elsewhere in today's **Federal Register**.

This new temporary final rule is necessary because it would be contrary to public interest not to maintain a temporary safety and security zone until the final rule becomes effective on March 5, 2004.

Background and Purpose

The need for this temporary security zone still exists. Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Salem and Hope Creek Generation Stations. This temporary rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants until a permanent security zone becomes effective on March 5, 2004.

Discussion of Rule

This temporary rule will extend the effective period of the security zone from 5 p.m. (EST) on January 24, 2004, through March 4, 2004. No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, PA or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Delaware River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Delaware River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 165.T05–078 is reinstated and revised to read as follows:

§ 165.T05–078 Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, New Jersey.

(a) *Location.* The following area is a security zone: the waters of the Delaware River in the vicinity of the Salem and Hope Creek Generation Stations bounded by a line drawn from a point located at 39°28′08.0″ N, 075°32′31.7″ W to 39°28′06.5″ N, 075°32′47.4″ W, thence to 39°27′28.4″ N, 075°32′15.8″ W, thence to 39°27′28.8″ N, 075°31′56.6″ W, thence to 39°27′39.9″ N, 075°31′51.6″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this temporary section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/ Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective period.* This section is effective from 5 p.m. (EDT) on May 13, 2003, through March 4, 2004.

Dated: January 16, 2004.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 04–2307 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–111]

RIN 1625–AA00

Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone in the Captain of the Port, Philadelphia, PA zone, immediately adjacent to the nuclear power facility at Oyster Creek Generation Station. This zone is needed to ensure public safety and security from subversive or terrorist acts. This rule is intended to prevent future terrorist attacks against nuclear power facilities by denying entry into the zone unless authorized by the Captain of the Port, or their designated representative.

DATES: This rule is effective March 5, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD05–03–111, which is available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Doreen Moore, Coast Guard Marine Safety Office Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 15, 2003 we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ" (68 FR 53930). We received two letters commenting on this proposed rule. Both letters requested a public hearing. After considering the comments, the COTP Philadelphia decided not to hold a public hearing.

In addition the following temporary final rule was published in the **Federal Register:** "Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ" (68 FR 32643, June 2, 2003). That temporary final rule established a security zone around the Oyster Creek Generating Station, Forked River, Ocean County, NJ. The original effective date of the temporary final rule was to expire at 5 p.m. (EST) on January 24, 2004. The effective date has been extended through March 4, 2004.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect vessels from damage, injury, or terrorist attack.

The Captain of the Port of Philadelphia has determined that a security zone is necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

Discussion of Comments

During the public comment period we received two letters. Both letters expressed concern that the security zone would exclude kayakers from access to paddle in specific areas on the Susquehanna River. Each respondent also requested a public hearing to discuss the proposed rule.

The Captain of the Port of Philadelphia has carefully weighed security concerns versus public access concerns in the decision to establish this security zone. The temporary and permanent security zone size and access to the areas were carefully considered and balanced against the increased need for safety and security outside the nuclear facility. The permanent zone will provide a clear area in which to detect persons or vessels while providing for traditional use outside of the security zone. This final rule remains unchanged from the proposed rules. A public hearing was considered, however given the number of requests and the need for increased security around the nuclear facility, no public hearing was held.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security

(DHS). No changes have been made to the rule.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. There is ample room for vessels to navigate around the security zone and the Captain of the Port may allow vessels to enter the zone on a case-by-case basis with the express permission of the Captain of the Port of Philadelphia or their designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The zone is limited in size and leaves ample room for vessels to navigate around the zone. The zone will not significantly impact commuter and passenger vessel traffic patterns; the vessels may be allowed to enter the zone on a case-by-case basis, with the express permission of the Captain of the Port of Philadelphia or their designated representative.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as none were identified that will be affected by the final rule.

Vessel traffic counts indicate the waterway users will continue to have the same access to the waterway as in the past, with the exception of a remote small area surrounding the waterfront near the Oyster Creek Generation Station.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard Marine Safety Office Philadelphia in writing at the address under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, from further environmental documentation.

We have considered waterside access constraints around the security zone and have determined the public can safely transit the affected waterways outside the security zone, without significant impact on the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.552 to read as follows.

§ 165.552 Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, New Jersey.

(a) *Location.* The following area is a security zone: Starting at the south branch of the Forked River in the vicinity of the Oyster Creek Generation Station, bounded by a line beginning at 39°49′12.0″ N, 074°12′13.0″ W; thence to 39°48′39.7″ N, 074°12′0″ W; along the shoreline, thence to 39°48′40.0″ N, 074°12′0.3″ W; thence to 39°49′11.8″ N, 074°12′10.5″ W; thence back along the shoreline to the beginning point. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zones must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia, or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: January 23, 2004.

Liam J. Slein,

Commander, U.S. Coast Guard, Acting Captain of the Port Philadelphia.

[FR Doc. 04–2308 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

CFR Part 165

[COTP PHILADELPHIA 03–005]

RIN 1625–AA00

Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule, change in effective period.

SUMMARY: The Coast Guard is continuing a temporary security zone on the waters adjacent to the Oyster Creek Generation Station. This zone will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: Effective January 24, 2004. Section 165.T05–091, added at 68 FR 32645, June 2, 2003, effective from 5 p.m. EDT on May 13, 2003, to 5 p.m. EST on January 24, 2004, as amended by this rule is effective through March 4, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP Philadelphia 03–005 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Doreen Moore, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

It took longer to resolve issues related to the final rule, which appears elsewhere in today's **Federal Register**, that will create a permanent security zone in this area than we originally expected at the time the last temporary final rule was issued. This new temporary final rule is necessary because it would be contrary to public interest not to maintain a temporary safety and security zone until the final rule becomes effective March 5, 2004.

This security zone should have minimal impact on vessel transits because the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington, DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Oyster Creek Generation Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potnetial threats to the security of the plants.

Currently, the need for this security zone still exists. This temporary rule will continue the effective period of the security zone through March 4, 2004 during the 30-day delayed effective period of a final rule published elsewhere in this issue of the **Federal Register**. That final rule, entitled "Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ", will become effective March 5, 2004 and will implement a permanent security zone surrounding the plant.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of Oyster Creek and Forked River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels wishing to transit the portions of Oyster Creek and Forked River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: The restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 165.T05–091 is reinstated and revised to read as follows:

§ 165.T05–091 Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, New Jersey.

(a) *Location.* The following area is a security zone: starting at the south branch of the Forked River in the vicinity of the Oyster Creek Generation Station, bounded by a line beginning at 39°49′12.0″ N, 074°12′13.0″ W; thence to 39°48′39.7″ N, 074°12′0″ W; along the shoreline, thence to 39°48′40.0″ N, 074°12′0.3″ W; thence to 39°49′11.8″ N, 074°12′10.5″ W; thence back along the shoreline to the beginning point. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this temporary section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/ Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective period.* This section is effective from 5 p.m. (EDT) on May 13, 2003, through March 4, 2004.

Dated: January 16, 2004.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 04–2309 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–057–7216g; A–1–FRL–7617–8]

Approval and Promulgation of Implementation Plans; Connecticut; Motor Vehicle Emissions Budgets for 2005 and 2007 using MOBILE6.2 for the Connecticut Portion of the New York-Northern New Jersey-Long Island Nonattainment Area and for 2007 for the Greater Connecticut Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the Connecticut State Implementation Plan (SIP) for the attainment and maintenance of the one-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone submitted by the State of Connecticut. The intended effect of this action is to approve Connecticut's 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and to approve Connecticut's 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area also recalculated using MOBILE6.2. This action is being taken under the Clean Air Act.

EFFECTIVE DATE: This rule is effective on February 4, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA 02114–2023; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1668, *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION:

The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

I. What Action Is EPA Taking Today?

On June 17, 2003, the Connecticut Department of Environmental Protection (CTDEP) submitted an amendment to the Connecticut State Implementation Plan (SIP) containing 2005 and 2007 motor vehicle emissions budgets recalculated using the MOBILE6.2 model for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area. This SIP revision fulfills the commitment made by the CTDEP in its February 8, 2000 SIP submittal to revise the transportation conformity budgets using EPA's MOBILE6 emissions model.[1] In addition, this SIP revision demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6.2 continue to support achievement of the rate of progress requirements and projected attainment of the one-hour ozone NAAQS for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and the Greater Connecticut nonattainment area. Connecticut held a public hearing on its proposed SIP revision on May 27, 2003. Today's action approves these budgets.

The specific 2005 and 2007 motor vehicle emission budgets that EPA is approving in today's rulemaking are identified below in Table 1. The rationale for EPA's action are explained in the notice of direct final rulemaking (68 FR 70484) published in the **Federal Register** on December 18, 2003, and will not be restated here.

II. What Comments Did EPA Receive in Response to Its Proposal?

A. Background Information

On December 18, 2003, the EPA announced in proposed and direct final rules published in the **Federal Register** (68 FR 70437 and 68 FR 70484, respectively) approval of Connecticut's SIP revision for its 2005 and 2007 motor vehicle emissions budgets using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 budgets for the Greater

[1] Document titled "Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area," February 8, 2000.

Connecticut nonattainment area, which are the subject of today's final rulemaking.

On December 20, 2003, EPA received an electronic comment on the direct final rule. EPA had indicated in its December 18, 2003 direct final rule that if EPA received adverse comments, it would withdraw the direct final rule. Consequently, elsewhere in today's **Federal Register**, EPA is publishing a separate withdrawal document to inform the public that EPA received an adverse comment and that the direct final rule will not take effect. EPA did not receive any other comments. EPA is addressing the adverse comment in today's final rule based upon the proposed action published on December 18, 2003.

B. Comments Received and EPA's Response

The sole comment EPA received on our action is as follows:

"[C]onnecticut Motor Vehicle Emissions

[T]hese emissions pollute the air for New Jersey as well, so standards must be set exceptionally high. NJ already has air pollution of immense degradation. We must set higher standards so that our air is cleaned. Standards should be set higher than those proposed. People in this area are being injured and killed by the air pollution we presently have."

The State of Connecticut previously established the appropriate levels of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) emission necessary from stationary sources, area sources and mobile sources (mobile sources includes emissions from on-road/highway motor vehicles) to attain the one-hour National Ambient Air Quality Standard for Ozone. These levels were documented and supported in detail in Connecticut's Ozone Attainment Demonstrations which EPA approved on January 3, 2001 (Greater Connecticut serious ozone nonattainment area, 66 FR 634) and December 11, 2001 (Connecticut portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area, 66 FR 63921). EPA's current action to approve Connecticut's revised 2005 and 2007 motor vehicle emission budgets was limited to approval of a change in the modeling of these previously established motor vehicle emission budgets, and EPA concluded that even with the new MOBILE6 emission levels, the two areas would still attain in a timely fashion. Issues related to the appropriate level of the National Ambient Air Quality Standards (NAAQSs) to protect human health and the environment, or to the emission levels selected by Connecticut to attain the one-hour ozone NAAQS are beyond the scope of this rulemaking.

III. What Is EPA's Conclusion?

EPA is approving Connecticut's revision submitted on June 17, 2003 containing 2005 and 2007 motor vehicle emissions budgets using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 budgets for the Greater Connecticut nonattainment area.

Table 1 contains Connecticut's revised budgets that EPA is approving today. These budgets were developed using the latest planning assumptions, including 2000 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. For the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area, EPA is approving budgets for 2005 and 2007, and for the Greater Connecticut nonattainment area EPA is approving budgets for 2007.

TABLE 1.—MOBILE6.2 TRANSPORTATION CONFORMITY BUDGETS

Year	Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area		Greater Connecticut	
	VOC (tons/day)	NO_X (tons/day)	VOC (tons/day)	NO_X (tons/day)
2005	19.5	36.8	NA	NA
2007	16.4	29.7	51.9	98.4

EPA has determined that today's rule falls under the "good cause" exemption in section 553(d)(3) of the Administrative Procedures Act (APA) which, upon finding "good cause," allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). EPA has concluded that it is not necessary to delay the effectiveness of this rule for 30 days because the entities that will be directly affected by these new budgets have had ample notice of our action and wish to use the new budgets as soon as possible. The state and Federal Departments of Transportation (DOTs) use these budgets to determine whether their transportation improvement programs conform with the planning assumptions in the state's implementation plan. The DOTs will be most immediately affected by EPA's approval of these new budgets and their transportation planning obligations are directly impacted by changes in these budgets. EPA and the Connecticut DEP have been consulting extensively with the DOTs about these budget changes. The DOTs are not only ready to use these new budgets without waiting 30 days, they are eager to use them as soon as possible to avoid delays in the transportation planning process. Therefore, since the entities that are most directly impacted by this approval are ready to use the new budgets and prefer to use them immediately, EPA is making this rule effective immediately. This rule will be effective February 4, 2004.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 28, 2004.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.377 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * * *

(b) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998, February 8, 2000 and June 17, 2003. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Greater Connecticut serious ozone nonattainment area. The revision establishes an attainment date of November 15, 2007 for the Greater Connecticut serious ozone nonattainment area. Connecticut commits to conduct a mid-course review to assess modeling and monitoring progress achieved toward the goal of attainment by 2007, and submit the results to EPA by December 31, 2004. The June 17, 2003 revision establishes MOBILE6-based motor vehicle emissions budgets for 2007 of 51.9 tons per day of volatile organic compounds (VOC) and 98.4 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Greater Connecticut serious ozone nonattainment area.

(c) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 15, 2001 and June 17, 2003. These revisions are for the purpose of satisfying the rate of progress requirement of section 182(c)(2)(B) through 2007, and the contingency measure requirements of section 182(c)(9) of the Clean Air Act, for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The October 15, 2001 revision establishes motor vehicle emissions budgets for 2002 of 15.20 tons per day of VOC and 38.39 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The June 17, 2003 revision establishes motor vehicle emissions budgets for 2005 of 19.5 tons per day of VOC and 36.8 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area.

(d) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998, February 8, 2000, October 15, 2001 and June 17, 2003. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The June 17, 2003 revision establishes MOBILE6-based motor vehicle emissions budgets for 2007 of 16.4 tons per day of VOC and 29.7 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. Connecticut commits to adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit by October 31, 2001, additional necessary intrastate control measures to

offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit additional restrictions on VOC emissions from mobile equipment and repair operations; and requirements to reduce VOC emissions from certain consumer products. Connecticut also commits to conduct a mid-course review to assess modeling and monitoring progress achieved toward the goal of attainment by 2007, and submit the results to EPA by December 31, 2004.

[FR Doc. 04–2267 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–057–7216f; FRL–7618–1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve Connecticut's 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and to approve Connecticut's 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area also recalculated using MOBILE6.2. In the direct final rule published on December 18, 2003 (68 FR 70437), we stated that if we received adverse comment by January 20, 2004, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on December 18, 2003 (68 FR 70484). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of February 4, 2004.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Environmental Scientist, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1668, *cooke.donald@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 26, 2004.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Accordingly, the revisions of 40 CFR 52.377(b), (c) and (d) (which published in the **Federal Register** on December 18, 2003 at 68 FR 70437) are withdrawn as of February 4, 2004.

[FR Doc. 04–2266 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0370; FRL–7335–6]

Bifenazate; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on potatoes. This action is in response to use of this chemical on potatoes under an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This regulation establishes a maximum permissible level for residues of bifenazate in this food commodity. The tolerance will expire and is revoked on December 31, 2006.

DATES: This regulation is effective February 4, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0370, must be received on or before April 5, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *Sec-18-Mailbox@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0370. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://*

www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the insecticide bifenazate (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on potatoes at 0.05 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

EPA has received objections to a tolerance it established for bifenazate on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to establish this emergency exemption tolerance for bifenazate while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing this tolerance at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters. EPA has published a notice describing the nature of the NRDC's objections in more detail. This notice offered an opportunity for the public to comment on this matter and published in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). EPA is now examining the extensive comments received. Second, the nature of the current action is extremely time-sensitive and addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing the tolerance for bifenazate.

III. Emergency Exemption for Bifenazate on Potatoes and FFDCA Tolerances

The states of Oregon and Washington requested the emergency use of bifenazate on potatoes to control an outbreak of spider mites. The use of bifenazate on potatoes in these states took place under a section 18 crisis declaration. The states invoked the crisis authorities because of damage that spider mites cause to the crop.

EPA assessed the potential risks presented by residues of bifenazate in or on potatoes. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2006, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on potatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether bifenazate meets EPA's registration requirements for use on potatoes or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of bifenazate by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for

any States other than Oregon and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenazate, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bifenazate and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of bifenazate in or on potatoes at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the no observed adverse effect level (NOAEL)) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the lowest observed adverse effect level (LOAEL)) is sometimes used for risk assessment if the NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). The FQPA requires, in certain circumstances, an additional safety factor for the protection of infants and children. Where this FQPA safety factor applies, EPA calculates an acute or chronic Population Adjusted Dose (aPAD or cPAD) by dividing the RfD by the FQPA safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. The non-dietary risk (other than cancer) is expressed as the margin of exposure (MOE), a ratio of the NOAEL to estimated exposures (margin of exposure (MOE) = NOAEL/exposure). An MOE higher than the applicable LOC would indicate that the risk is not of concern.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (*e.g.*, risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for bifenazate used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENAZATE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population and females 13–50 years old)	NA	NA	An acute dietary endpoint was not selected based on the absence of an appropriate endpoint attributed to a single dose
Chronic dietary; (all populations)	NOAEL= 1.0 milligram/kilogram/day (mg/kg/day) UF = 100 cRfD = 0.01 mg/kg/day	FQPA SF = 1X cPAD = 0.01 mg/kg/day	LOAEL = 8.9/10.4 mg/kg/day M/F based on changes in hematological and clinical chemistry parameters, and histopathology in bone marrow, liver, and kidney in the 1–Year Dog Feeding Study
Incidental oral, short-term (1–30 days)	Oral NOAEL = 10 mg/kg/day	LOC for MOE ≤ 100 (residential)	Maternal LOAEL = 100 mg/kg/day based on clinical signs, decreased body weight and food consumption during the dosing period in the Rat Developmental Study
Incidental oral, intermediate-term (30 days to 6 months)	Oral NOAEL = 0.9 mg/kg/day	LOC for MOE ≤ 100 (residential)	LOAEL = 10.4/10.7 mg/kg/day M/F based on changes in hematologic parameters in the 90–Day Subchronic Dog Study

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENAZATE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-, intermediate- and long-term dermal (1–30 days, 30 days to 6 months, and 6 months to lifetime)	Dermal NOAEL = 80 mg/kg/day	LOC for MOE ≤ 100 (residential)	LOAEL = 400 mg/kg/day based on decreased body weight and food consumption, hematologic effects, increased spleen weight and extramedullary hemapoiesis in the spleen in the 21–Day Dermal Toxicity Study in Rats
Short-term inhalation (1–30 days)	Oral NOAEL= 10 mg/kg/day inhalation absorption rate = 100%	LOC for MOE ≤ 100 (residential)	LOAEL = 100 mg/kg/day based on decreased body weight and food consumption in the Rat Developmental Study
Intermediate-term inhalation (30 days to 6 months)	Oral NOAEL= 0.9 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE ≤ 100 (residential)	LOAEL = 10.4/10.7 mg/kg/day based on changes in hematologic parameters in the 90–Day Dog Feeding Study
Long-term inhalation 6 months to lifetime)	Oral study NOAEL= 1.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE ≤ 100 (residential)	LOAEL = 8.9/10.4 mg/kg/day M/F based on changes in hematological and clinical chemistry parameters, and histopathology in bone marrow, liver, and kidney in the 1–Year Dog Feeding Study
Cancer (oral, dermal, inhalation)	NA	NA	Bifenazate is classified as "not likely" to be a human carcinogen

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.572) for the combined residues of bifenazate, (hydrazinecarboxylic acid, 2-(4-methoxy-1,1'-biphenyl]-3-yl), 1-methylethyl ester) and D3598 expressed as bifenazate (diazinecarboxylic acid, 2-(4-methoxy-1,1'-biphenyl]-3-yl), 1-methylethylester)], in or on apple, wet pomace; cattle, fat; cotton, gin byproducts; cotton, undelinted seed; fruit, pome, group 11; goat, fat; grape; grape, raisin; hog, fat; hog, dried cone; horse, fat; nectarine; peach; plum; sheep, fat, and strawberry, and bifenazate (hydrazinecarboxylic acid, 2-(4-methoxy-1,1'-biphenyl]-3-yl), 1-methylethyl ester) and D3598 expressed as bifenazate (diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethylester), A1530 (1,1'-biphenyl, 4-ol) and A1530-sulfate expressed as A1530 (1,1'-biphenyl, 4-oxysulfonic acid) in or on cattle, meat; cattle, meat byproducts; goat, meat; goat, meat byproducts; hog, meat; hog, meat byproducts; horse, meat; horse, meat byproducts; milk; sheep, meat; and sheep, meat byproducts.

Risk assessments were conducted by EPA to assess dietary exposures from bifenazate in food as follows:

i. *Acute exposure.* An acute dietary reference dose (RfD) for the females 13–50 years of age and the general population, including infants and children, was not selected because an acute oral endpoint attributed to a single-dose exposure could not be identified in any of the studies in the toxicology data base, including developmental and maternal toxicity in the developmental toxicity studies.

ii. *Chronic exposure.* In conducting this acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM/FCID™) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessment: The chronic dietary exposure analysis assumed tolerance level residues and 100% crop treated for all registered and proposed crops excluding tomato where average field trial residues were used. DEEM (ver 7.73) default processing factors were assumed for all commodities excluding apple juice, grape juice, wine/sherry, tomato paste, and tomato puree. The processing factors for these commodities were reduced to 0.23, 0.17, 0.17, 5.0, and 5.0, respectively, based on data from processing studies.

iii. *Cancer.* EPA has classified bifenazate as "not likely" to be a human carcinogen. Therefore, a cancer dietary exposure and risk assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for bifenazate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of bifenazate.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will generally use FIRST (a Tier 1 model) before using PRZM/

EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for estimating the highest pesticide drinking water concentrations that might ever be encountered.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, EPA determines the maximum permissible exposures (acute, short-term, intermediate-term and chronic) to the pesticide in drinking water, taking into account the expected exposure through food and residential uses. These maximum permissible level of exposure through drinking water are called drinking water levels of comparison (DWLOCs) and used as a point of comparison against the model estimates of a pesticide's concentration in water. So long as the estimated EECs from these screening models (which are designed to estimate theoretical upper limits on a pesticide's concentration in drinking water) do not exceed the applicable DWLOCs, EPA concludes that exposure to the pesticide in drinking water does not pose a risk of concern in light of total aggregate exposure to a pesticide in food, and from residential uses. Because DWLOCs address total aggregate exposure to bifenazate they are further discussed in the aggregate risk sections below.

Parent bifenazate degrades rapidly in aerobic soil conditions with a half-life of approximately 30 minutes. The first degradate formed (D3598; half-life of 7 hours) was reported in a concentration of 95% of the applied radioactivity . D3598 degrades to D1989 (reported at a maximum of 26% of the applied radioactivity), which is moderately persistent with an EPA- calculated half-life of approximately 96 days. Photodegradation and other routes of dissipation of parent bifenazate do not appear to be significant.

The Agency concluded that the residue of concern in drinking water is D1989. Parent and D3598 were not included as a residue of concern in drinking water due to the short half-lives of these compounds and the lack of an acute dietary endpoint (toxicity of D3598 is assumed to be equivalent to bifenazate). Since ground or surface water monitoring data to calculate a quantitative aggregate exposure are not available, EPA provided Tier I ground (SCI-GROW) and surface water (FIRST) EECs for D1989. Both EEC calculations with both models were based on the strawberry application scenario (one application at 0.75 lbs ai/acre;) because this is the highest registered/proposed application rate). The resulting ground and chronic surface water EECs are <0.001 ppb and 6.4 ppb, respectively.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Bifenazate is currently registered for use on the following residential non-dietary sites: Commercial application to ornamental plants (including bedding plants, flowering plants, foliage plants, bulb crops, perennials, trees and shrubs; not turf) and all fruit trees which will not bear fruit for a minimum of 12 months. The proposed label is amended to permit application by residents/ homeowners. The risk assessment was conducted using the following residential exposure assumptions: EPA anticipates only short-term dermal and short-term inhalation exposure from the requested residential use. The proposed formulation is appropriate for application via pump up sprayers, garden hose-end sprayers or similar "homeowner" pesticide devices. The Agency believes that persons using a hose-end sprayer are likely to treat a larger area per day than those using a "pump up" compressed air sprayer, which in turn results in possibly greater contact with the pesticide active ingredient per day for applicators using hose-end sprayers. In order to avoid underestimating residential risk, exposure from a hose-end sprayer is assessed rather than that of a compressed air sprayer. For the treatment of shrubs and ornamentals, EPA assumed 100 gallons of finish spray are applied per day. The unit exposure value for a residential handler using open pour mixing/loading for a garden hose-end sprayer is 11 mg/lb handled (dermal) and 0.013 mg/lb handled. Exposures were calculated using the Agency's draft Residential Standard Operating Procedures.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether bifenazate has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to [bifenazate] and any other substances and bifenazate does not appear to produce a toxic metabolite produced by other substances.For the purposes of this tolerance action, therefore, EPA has not assumed that bifenazate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at *http://www.epa.gov/pesticides/cumulative/.*

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Developmental toxicity and reproductive toxicity studies performed with bifenazate yield no qualitative or quantitative toxicity evidence of increased susceptibility among rats and rabbits during *in utero* exposure or during postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for bifenazate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the lack of increased susceptibility and the completeness of the toxicity and exposure databases, EPA has concluded that an additional 10X safety factor is not needed to protect infants and children.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water, instead, DWLOCs indicate the maximum pesticide concentration in drinking water that would be of no regulatory concern in light of total aggregate exposure to a pesticide in food and residential uses. A DWLOC represents how much of the acceptable exposure (*i.e.*, the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)).

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to bifenazate in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. Before new uses are added in the future, EPA will reassess the potential impacts of bifenazate on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Because no acute oral toxicity endpoint attributed to a single-dose exposure was identified in any of the studies in the toxicology data base, including developmental and maternal toxicity in the developmental toxicity studies, an acute dietary risk assessment was not conducted.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenazate from food will utilize 25% of the cPAD for the U.S. population, 60% of the cPAD for all infants < 1 year old, 86% of the cPAD for children 1–2 years old (the most highly exposed population subgroup), and 17% of the cPAD for females 13–49 years old. Based on the use pattern, chronic residential exposure to residues of bifenazate is not expected. In addition, there is potential for chronic dietary exposure to bifenazate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENAZATE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.01	25	6.4	<0.001	260
All infants (<1 year old)	0.01	60	6.4	<0.001	75
Children (1-2 years old)	0.01	86	6.4	<0.001	14
Females (13-49 years old)	0.01	17	6.4	<0.001	290

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenazate is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenazate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 2,000 for the U.S. population, 2,100 for youth 13–19 years old, 2,400 for adults 20–49 years old, 2,200 for females 13–49 years old, and 2,300 for adults 50+ years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenazate in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BIFENAZATE

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	2,000	100	6.4	<0.001	3,500
Youth (13-19 years old)	2,100	100	6.4	<0.001	3,000
Adults (20-49 years old)	2,400	100	6.4	<0.001	3,500
Females (13-49 year old)	2,200	100	6.4	<0.001	3,000
Adults (50+ years old)	2,300	100	6.4	<0.001	3,500

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Residential intermediate-term aggregate exposure (30 days to 6 months) is not expected from use of this chemical. Thus, the intermediate-term risk for the public consista od food and water exposures which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* EPA has classified bifenazate as "not likely" to be a human carcinogen. Therefore, a cancer dietary exposure and risk assessment was not performed.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bifenazate residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

Canada, Codex, and Mexico do not have maximum residue limits (MRLs) for residues of bifenazate in/on the proposed crop. Therefore, harmonization is not an issue.

VI. Conclusion

Therefore, a time-limited tolerance is established for combined residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on potatoes at 0.05 ppm. This time-limited tolerance will expire on December 31, 2006.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0370 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 5, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at

tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3.*Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0370, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32)..

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: January 21, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.572 is amended by alphabetically adding the following commodity to the table in paragraph (b) to read as follows:

§ 180.572 Bifenazate; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Potato	0.05	12/31/06

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[FR Doc. 04–2271 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 012904D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Increase

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action; trip limit increase.

SUMMARY: NMFS increases the trip limit in the commercial hook-and-line fishery for king mackerel in the Florida east coast subzone from 50 to 75 fish per day in or from the exclusive economic zone (EEZ). This trip limit increase is necessary to maximize the socioeconomic benefits of the quota.

DATES: This rule is effective 12:01 a.m., local time, February 1, 2004, through March 31, 2004, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5727, e-mail: *Mark.Godcharles@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A) (*1*)).

In accordance with 50 CFR 622.44(a)(2)(i), beginning on February 1, if less than 75 percent of the Florida east coast subzone's quota has been harvested by that date, king mackerel in or from that subzone's EEZ may be possessed on board or landed from a permitted commercial vessel in amounts not exceeding 75 fish per day. The 75–fish daily trip limit will continue until a closure of the subzone's fishery has been effected or the fishing year ends on March 31, 2004.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel for vessels using hook-and-line gear in the Florida east coast subzone was not reached before February 1, 2004. Accordingly, a 75–fish trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida east coast subzone effective 12:01 a.m., local time, February 1, 2004. The 75–fish trip limit will remain in effect until the fishery closes or until the end of the current fishing season (March 31, 2004) for this subzone. From November 1 through March 31, the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit increase. Allowing prior notice and opportunity for public comment is contrary to the public interest because it requires time, thus delaying fishermen's ability to catch more king mackerel than present trip limits allow and preventing fishermen from reaping the socio-economic benefits derived from this increase in catch.

As this action allows fishermen to increase their harvest of king mackerel from 50 fish per day to 75 fish per day in or from the EEZ of the Florida east coast subzone, the AA finds that it relieves a restriction and may go into effect on its effective date pursuant to 5 U.S.C. 553(d)(1). This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–2294 Filed 1–30–04; 3:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.031126297–3297–01; I.D. 013004B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 2, 2004, until superseded by the notice of Final 2004 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area is 1,213 metric tons (mt) as established by the interim 2004 harvest specifications of groundfish for the GOA (68 FR 67964, December 5, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,083 mt, and is setting aside the remaining 130 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fishery under the interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–2293 Filed 1–30–04; 3:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126295–3295–01; I.D. 012904C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rescission and revision of a closure.

SUMMARY: The National Marine Fisheries Service (NMFS) is rescinding a February 2, 2004, closure announced previously for the first directed fishery for Atka mackerel within the harvest limit area (HLA) in Statistical Area 543 of the Bering Sea and Aleutian Islands management area (BSAI), and is establishing a revised date for the closure at 12 noon, A.l.t., January 30, 2004. This action is necessary to prevent exceeding the interim 2004 Atka mackerel HLA limit established for area 543 pursuant to the interim 2004 Atka mackerel total allowable catch (TAC). The closure date for the first directed fishery in the HLA in area 542, effective 1200 hrs, A.l.t., February 2, 2004, and the opening and closures dates of the second directed fisheries in the HLA in area 542 and area 543 effective, 1200 hrs, A.l.t., February 4, 2004, until 1200 hrs, A.l.t., February 13, 2004, remain unchanged.

DATES: The first directed fishery for Atka mackerel in the HLA in area 543 closes 1200 hrs, A.l.t., January 30, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS

randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS notified each vessel owner as to which fishery each vessel has been assigned (69 FR 2849, January 21, 2004).

In accordance with § 679.20(a)(8)(ii)(C)(1) and as established by the Interim 2004 Harvest Specifications for Groundfish (68 FR 68,265, December 8, 2003), the HLA limit of the interim TAC in area 543 is 5,097 metric tons (mt). Based on this limit and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 543, the harvest limit for the first HLA directed fishery in area 543 is 2,549 mt. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator is rescinding the February 2, 2004, closure announced previously for this fishery (69 FR 2850, January 21, 2004), and is establishing a revised time and date for the closure of the first directed fishery for Atka Mackerel within the HLA in Statistical Area 543 of the BSAI as 12 noon, A.l.t., January 30, 2004, based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the fisheries.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion, would delay the closure of the fishery under the interim 2004 Atka mackerel HLA limit established for area 543 of the BSAI and would prevent the Agency from ensuring that the 2004 Atka mackerel HLA limit established for area 543 not be exceeded.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–2292 Filed 1–30–04; 3:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.031126297–3297–01; I.D. 013004A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Vessels Catching Pacific cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 31, 2004, until superseded by the notice of Final 2004 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area is 10,916 metric tons (mt) as established by the interim 2004 harvest specifications of groundfish for the GOA (68 FR 67964, December 5, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,016 mt, and is setting aside the remaining 1,900 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fishery under the interim 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–2291 Filed 1–30–04; 3:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 23
Wednesday, February 4, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chap. VII

Request for Burden Reduction Recommendation; Consumer Protection: Lending-Related Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

AGENCY: National Credit Union Administration.

ACTION: Proposed rule; notice of regulatory review; request for comments.

SUMMARY: The NCUA Board is continuing its review of its regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on federally-insured credit unions pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Today, NCUA requests comments and suggestions on ways to reduce burden in rules we have categorized as Consumer Protection: Lending-Related Rules, consistent with our statutory obligations. All comments are welcome.

We specifically invite comment on the following issues: Whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small credit unions; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

We will analyze the comments received and propose burden reducing changes to our regulations where appropriate. Some suggestions for burden reduction might require legislative changes. Where legislative changes would be required, we will consider the suggestions in recommending appropriate changes to the Congress.

DATES: Comment must be received on or before May 4, 2004.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.* Because of the number of regulatory matters for which NCUA may be receiving comments during the time this comment period is open, we suggest commenters identify comments in response to this notice by including "EGRPRA" in a subject or reference line in their comments.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Introduction

NCUA seeks public comment and suggestions on ways it can reduce regulatory burdens consistent with our statutory obligations. Today, we request input to help us identify which Consumer Protection—Lending Related rules are outdated, unnecessary, or unduly burdensome. The rules in this category are listed in a chart at the end of this notice. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.

In drafting this notice, the NCUA participated as part of the EGRPRA planning process with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Agencies). Because of the unique circumstances of federally-insured credit unions and their members, NCUA is issuing a separate notice from the other Agencies, which are issuing a joint notice. NCUA's notice is consistent and comparable with the joint notice published by the other Agencies, except on issues that are unique to credit unions.

This notice includes several regulations that affect credit union lending activity that are issued by the Board of Governors of the Federal Reserve System (Federal Reserve): Equal Credit Opportunity, 12 CFR part 202 (Regulation B), Home Mortgage Disclosure, 12 CFR part 203 (Regulation C), Consumer Leasing, 12 CFR part 213 (Regulation M) and Truth in Lending, 12 CFR part 226 (Regulation Z). These regulations are also included in the Agencies' joint notice in which the Federal Reserve is participating. The NCUA has enforcement authority for federal credit unions for Regulations B, M, and Z and for both federal credit unions and federally-insured state chartered credit unions for Regulation C. Credit unions and other interested parties seeking to comment on these rules may either submit comments to the NCUA or the EGRPRA Web site, at *www.EGRPRA.gov,* as specified in the joint notice. Commenters may address any aspect of the regulations, including specifically how the regulations uniquely affect credit unions.

II. A. The EGRPRA Review Requirements and NCUA's Proposed Plan

This notice is part of the regulatory review required by section 2222 of EGRPRA.[1] The NCUA described the review requirements in our initial **Federal Register** notice, published on July 3, 2003.[2] As we noted at that time, we anticipate that the EGRPRA review's overall focus on the "forest" of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. We must, of course, assure that the effort to reduce regulatory burden is consistent with applicable statutory mandates and provides for the continued safety and soundness of federally-insured credit unions and appropriate consumer protections.

The EGRPRA review required that NCUA categorize our regulations by type. Our July 3, 2003, **Federal Register** publication identified ten broad categories for our regulations. The categories are:

1. Applications and Reporting
2. Powers and Activities
3. Agency Programs
4. Capital
5. Consumer Protection

[1] Pub. L. 104–208, div. A, title II, sec. 2222, 110 Stat. 3009–414; codified at 12 U.S.C. 3311.

[2] 68 FR 39863.

6. Corporate Credit Unions
7. Directors, Officers and Employees
8. Money Laundering
9. Rules of Procedure
10. Safety and Soundness

To spread the work of commenting on and reviewing the categories of rules over a reasonable period of time, we proposed to publish one or more categories of rules approximately every six months between 2003 and 2006 and provide a 90-day comment period for each publication. We asked for comment on all aspects of our plan, including: The categories, the rules in each category, and the order in which we should review the categories. Because the NCUA was eager to begin reducing unnecessary burden where appropriate, our initial notice also published the first two categories of rules for comment (Applications and Reporting and Powers and Activities). All our covered categories of rules must be published for comment and reviewed by the end of September 2006.

The EGRPRA review then requires the Agencies to: (1) Publish a summary of the comments we received, identifying and discussing the significant issues raised in them; and (2) eliminate unnecessary regulatory requirements. Within 30 days after the Agencies publish the comment summary and discussion, the Federal Financial Institutions Examination Council, which is the formal interagency body to which all of the Agencies, including the NCUA, belong, must submit a report to the Congress. This report will summarize significant issues raised by the public comments and the relative merits of those issues. It will also analyze whether the appropriate federal banking agency can address the burdens by regulation, or whether the burdens must be addressed by legislation.

B. Public Response and NCUA's Current Plan

NCUA received eight comments in response to its first notice. The comments have been reviewed and an ongoing analysis of them is underway. The comments have been posted on the interagency EGRPRA Web site (*www.EGRPRA.gov*) and can be viewed by clicking on "Comments." We are actively reviewing the feedback received about specific ways to reduce regulatory burden, as well as conducting our own analyses. Because the main purpose of this notice is to request comment on the next category of regulations, we will not discuss specific recommendations about the first set of regulation categories here. However, as we develop initiatives to reduce burden on specific subjects in the future—whether through regulatory, legislative, or other channels—we will discuss the public's recommendations that relate to our proposed actions.

In our last notice, we requested comment about our proposed categories and placement of the rules within each category. Persons commenting on the joint notice published by the other Agencies last June observed that commenting on the Consumer Protection category would be burdensome in itself, and suggested that we might receive more useful feedback if the category was divided. As a result, both NCUA and the other Agencies have divided the consumer protection regulations into two categories: (1) Lending-Related Rules, and (2) Share Account—Deposit Relationships and Miscellaneous Consumer Rules. The regulations in the Lending-Related Rules category are listed in the chart below. The Share Account—Deposit Relationships and Miscellaneous Consumer Rules category will contain the remaining rules previously identified in the Consumer Protection category. We plan to request comment on the Share Account—Deposit Relationships and Miscellaneous Consumer Rules in the next notice.

We also requested comment about the order we should review the categories. According to some industry representatives, the requirements imposed by the Consumer Protection regulations are among the most burdensome. Given this response, we will focus on those rules first.

III. Request for Comment on Consumer Protection: Lending Related Rules Category

NCUA is asking the public to identify the ways in which the Consumer Protection: Lending Related rules may be outdated, unnecessary, or unduly burdensome. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change. The rules in this category are listed in the chart below.

We encourage comments that not only deal with individual rules or requirements but also pertain to certain product lines. For example, in the case of a particular loan, are any disclosure requirements under one regulation inconsistent with or duplicative of requirements under another regulation? Are there unnecessary records that must be kept? A product line approach is consistent with EGRPRA's focus on how rules interact, and may be especially helpful in exposing redundant or potentially inconsistent regulatory requirements. We recognize that commenters using a product line approach may want to make recommendations about rules that are not in our current request for comment. They should do so since the EGRPRA categories are designed to stimulate creative approaches rather than limiting them.

Specific issues to consider. While all comments are welcome, NCUA specifically invites comment on the following issues:

- *Need for statutory change.* Do any of the statutory requirements underlying these regulations impose redundant, conflicting or otherwise unduly burdensome requirements? Are there less burdensome alternatives?
- *Need and purpose of the regulations.* Are the regulations consistent with the purposes of the statutes that they implement? Have circumstances changed so that the regulation is no longer necessary? Do changes in the financial products and services offered to consumers suggest a need to revise certain regulations (or statutes)? Do any of the regulations impose compliance burdens not required by the statutes they implement?
- *General approach/flexibility.* Generally, is there a different approach to regulating that NCUA could use that would achieve statutory goals while imposing less burden? Do any of the regulations in this category or the statutes underlying them impose unnecessarily inflexible requirements?
- *Effect of the regulations on competition.* Do any of the regulations in this category or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?
- *Reporting, recordkeeping and disclosure requirements.* Do any of the regulations in this category or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden? Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?
- *Consistency and redundancy.* Do any of the regulations in this category impose inconsistent or redundant regulatory requirements that are not warranted by the purposes of the regulation?

• *Clarity.* Are the regulations in this category drafted in clear and easily understood language?

• *Burden on small insured institutions.* NCUA has a particular interest in minimizing burden on small insured credit unions (those with less than $10 million in assets). More than half of federally-insured credit unions are small—having $10 million in assets or less—as defined by NCUA in IRPS 03–2. NCUA solicits comment on how any regulations in this category could be changed to minimize any significant economic impact on a substantial number of small credit unions.

NCUA appreciates the efforts of all interested parties to help us eliminate outdated, unnecessary or unduly burdensome regulatory requirements.

IV. Regulations About Which Burden Reduction Recommendations Are Requested Currently

Consumer Protection: Lending Related Rules	
Nondiscrimination Requirement (Fair Housing)	12 CFR 701.31.
Loans in Areas Having Special Flood Hazards	12 CFR part 760.
Credit Practices	12 CFR part 706.
[Federal Reserve Rules]	
Equal Credit Opportunity [Regulation B]	12 CFR part 202.
Home Mortgage Disclosure [Regulation C]	12 CFR part 203.
Consumer Leasing [Regulation M]	12 CFR part 213.
Truth in Lending [Regulation Z]	12 CFR part 226.

By the National Credit Union Administration Board on January 28, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–2279 Filed 2–3–04; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule; notice of intent to waive the Nonmanufacturer Rule for General Aviation Turboprop Aircraft.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before February 20, 2004.

ADDRESSES: Address comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422, FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Pub. L. 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS).* The second is the Product and Service Code established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for General Aviation Turboprop Aircraft, North American Industry Classification System (NAICS) 441229. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Barry S. Meltz,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–2239 Filed 2–3–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–63–AD]

RIN 2120–AA64

Airworthiness Directives; HPH s.r.o. Models Glasflü gel 304CZ, 304CZ–17, and 304C Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all HPH s.r.o. (HPH) Models Glasflü gel 304CZ, 304CZ–17, and 304C sailplanes. This proposed AD would require you to inspect to determine the airbrake handle attachment rivet material. This proposed AD would require you to replace any non-steel rivet with a steel rivet. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. We are issuing this proposed AD to prevent the airbrake handle from becoming loose, which could result in failure of the airbrake control. This failure could lead to loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by March 4, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–63–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–63–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from HPH spol.s r.o., Čáslavská 126, P.O. Box 112, CZ284 01 Kutná Hora, Czech Republic; telephone: 011–42–327 513441; e-mail: *hph@hph.cz.*

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–63–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–63–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified FAA that an unsafe condition may exist on all HPH Models Glasflü gel 304CZ, 304CZ–17, and 304C sailplanes. The CAA reports that excessive free play in the airbrake handle was found during a pre-flight check on a Glasflü gel 304CZ sailplane.

A non-steel (duralumin) rivet connecting the airbrake handle to the pushrod had become loose.

What Are the Consequences if the Condition Is Not Corrected?

If not corrected, a loose airbrake handle could result in failure of airbrake control. This failure could lead to loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

HPH spol.s r.o. has issued Mandatory bulletin No.: G304CZ–05 a) G304CZ17–05 a), dated March 26, 2003.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

- Inspecting to determine the airbrake handle attachment rivet material; and
- Replacing any non-steel rivet with a steel rivet.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued Czech Republic AD Number CAA–AD–040/2003, dated May 6, 2003, to ensure the continued airworthiness of these sailplanes in Czech Republic.

Did the CAA Inform the United States Under the Bilateral Airworthiness Agreement?

These HPH Models Glasflügel 304CZ, 304CZ–17, and 304C sailplanes are manufactured in the Czech Republic and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other HPH Models Glasflügel 304CZ, 304CZ–17, and 304C sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent the airbrake handle from becoming loose, which could result in failure of the airbrake control. This failure could lead to loss of control of the sailplane.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Sailplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 12 sailplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	Not applicable	$65	$65 × 12 = $780

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of sailplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65	$10	$65 + 10 = $75

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government:

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–63–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

HPH S. R.O.: Docket No. 2003–CE–63–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by March 4, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects Models Glasflügel 304CZ, 304CZ–17, and 304C sailplanes, serial numbers 1 though 60–17, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified in this AD are intended to prevent the airbrake handle from becoming loose, which could result in failure of the airbrake control. This failure could lead to loss of control of the sailplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect to determine the airbrake handle attachment rivet material.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD.	Follow HPH spol.s r.o. Mandatory Bulletin No.: G304CZ–05 a) G304CZ17–05 a), dated March 26, 2003.
(2) Replace any non-steel attachment rivet with a steel rivet.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow HPH spol.s r.o. Mandatory Bulletin No.: G304CZ–05 a) G304CZ17–05 a), dated March 26, 2003.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from HPH spol.s r.o., Cáslavská 126, P.O. Box 112, CZ284 01 Kutná Hora, Czech Republic; telephone: 011–42–327 513441; e-mail: *hph@hph.cz*.

You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) Czech Republic AD Number CAA–AD–040/2003, dated May 6, 2003.

Issued in Kansas City, Missouri, on January 26, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2252 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 10

[REG–122379–02]

RIN 1545–BA70

Regulations Governing Practice Before the Internal Revenue Service; Hearing

AGENCY: Departmental Offices, Treasury.

ACTION: Change of date of public hearing on proposed rulemaking.

SUMMARY: This document changes the date of a public hearing on proposed regulations relating to practice before the Internal Revenue Service.

DATES: The public hearing originally scheduled for Wednesday, February 18,

2004, at 10 a.m. is rescheduled for Thursday, February 19, 2004, at 10 a.m. Written or electronically submitted public comments are due on February 13, 2004. Outlines of topics to be discussed at the public hearing must be received by February 11, 2004.

ADDRESSES: The public hearing is being held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. Send submissions to: CC:PA:LPD:PR (REG–122379–02); Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–122379–02) Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, comments may be transmitted electronically via the Internet by submitting comments directly to the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor of the Publication and Regulations Branch, Associate Chief Counsel (Procedures & Administration), at (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Tuesday, December 30, 2003 (68 FR 75186), announced that a public hearing on proposed regulations relating to practice before the Internal Revenue Service, would be held on Wednesday, February 18, 2004, beginning at 10 a.m., in the auditorium of the Internal Revenue Building at 1111 Constitution Avenue NW., Washington, DC.

The date of the public hearing has changed. The hearing is scheduled for Thursday, February 19, 2004, beginning at 10 a.m., in the auditorium of the Internal Revenue Building at 1111 Constitution Avenue, NW., Washington, DC. Outlines of topics to be discussed at the public hearing must be received by February 11, 2004.

Dated: January 30, 2004.

Richard S. Carro,

Senior Advisor to the General Counsel.

[FR Doc. 04–2297 Filed 2–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–98–4868 (gas), Notice 4; and RSPA–03–15864 (liquid), Notice 2]

Gas and Hazardous Liquid Gathering Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Clarification of rulemaking intentions and extension of time for comments.

SUMMARY: RSPA's Office of Pipeline Safety (RSPA/OPS) recently held public meetings in Austin, Texas, and Anchorage, Alaska, to receive public comment on the definition of "gathering line" and on the regulation of certain rural gas and hazardous liquid gathering lines. RSPA/OPS also invited the public to submit written comments by January 17, 2004. RSPA/OPS's pipeline safety advisory committees will discuss these gathering line issues at a public meeting on February 3–5, 2004, at the Dulles Marriott Hotel, Dulles, Virginia. This notice clarifies RSPA/OPS's rulemaking approach to gathering lines regulation and explains the type of information RSPA/OPS is seeking. It also extends the deadline for written comments.

DATES: The revised deadline for submitting written comments is March 4, 2004. However, late-filed comments will be considered as far as practicable.

ADDRESSES: You may submit written comments directly to the dockets by any of the following methods:

- *Mail:* Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- *Hand delivery or courier:* Room PL–401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.
- *Web site:* Go to *http://dms.dot.gov,* click on "Comment/Submissions" and follow instructions at the site.

All written comments should identify the gas or liquid docket number and notice number stated in the heading of this notice.

Docket access. For copies of this notice or other material in the dockets, you may contact the Dockets Facility by phone (202–366–9329) or visit the facility at the above street address. For Web access to the dockets to read and download filed material, go to *http://dms.dot.gov/search.* Then type in the last four digits of the gas or liquid docket number shown in the heading of this notice, and click on "Search."

Privacy Act Information. Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: DeWitt Burdeaux by phone at 405–954–7220 or by e-mail at *dewitt_burdeaux@tsi.jccbi.gov* regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION:

Background

Because of disagreements over the meaning of gas "gathering line" in 49 CFR part 192, RSPA/OPS has twice proposed to redefine the term. The first proposal was withdrawn (43 FR 42773; September, 1978), and the second (56 FR 48505; September 25, 1991) remains open. In reaction to unfavorable comments on these proposals, RSPA/OPS delayed final action pending the collection and consideration of further information on the gas "gathering line" issue. In contrast, RSPA/OPS has had little difficulty applying the definition of petroleum "gathering line" in 49 CFR part 195.

Following the second proposal to define gas "gathering line," Congress directed DOT to define "gathering line" for both gas and hazardous liquid pipelines, and, "if appropriate," define as "regulated gathering line" those rural gathering lines that, because of specific physical characteristics, should be regulated (49 U.S.C. 60101(b)). In furtherance of the open rulemaking proposal and the congressional directives, RSPA/OPS held an internet discussion that focused on a definition offered by the Gas Processors Association (GPA) (Docket No. RSPA–98–4868; 64 FR 12147; March 11, 1999).

However, follow-up action stalled because RSPA/OPS and its associated state pipeline safety agencies were concerned that physical pipeline features referenced in the GPA definition were changeable. As a stopgap, while deliberating on a suitable alternative to the 1991 proposal, RSPA/OPS published an advisory bulletin reminding pipeline operators that we would continue to define gas gathering

based on historical interpretations and court precedents until further notice (67 FR 64447; October 18, 2002).

Public Meetings

In late 2003, RSPA/OPS held public meetings in Austin, Texas, and Anchorage, Alaska, to seek additional public comments on how to respond to the congressional directives on gathering lines. Notices of the meetings were published in the **Federal Register** on November 5, 2003 (68 FR 62555) and December 1, 2003 (68 FR 67129). During these meetings, RSPA/OPS suggested an approach to determining which segments of rural gathering lines should be regulated. The approach, which we used in a consent order issued to Hanley & Bird, Inc., a Pennsylvania Gas Production and Gathering Operator, is based on a density of five or more dwelling units per thousand linear feet of pipeline. The order may be viewed at *http://ops.dot.gov/regions/easterndoc/cpf13002o.wpd*.

RSPA/OPS suggested this approach to generate public comments on how to define "regulated gathering line," not to describe a planned course of action. In addition, we hoped the suggestion would result in comments on the level of regulation appropriate to the characteristics and perceived risk of gathering lines in inhabited areas.

After the public meetings, we became concerned that the issues listed in the meeting notices may have caused confusion about what information we are seeking. To promote informed public participation in resolving the issues and in the advisory committee meetings, we decided to publish this notice to clarify our regulatory intentions.

Extension of Comment Period

So that interested persons may consider the clarifications, this notice extends the time for written comments from January 17, 2004, to March 4, 2004. Although we are grateful for the comments we have already received and the efforts made to meet the January 17, 2004, deadline, we hope the extension will encourage even more comments.

Advisory Committee Meetings

Another opportunity for the public to comment on defining gas "gathering line" and "regulated gathering line" will occur February 3–5, 2004, at a meeting of RSPA/OPS's pipeline safety advisory committees at the Dulles Marriott Hotel, Dulles, Virginia. An announcement of the meeting was published in the December 31, 2003, issue of the **Federal Register** (68 FR 75727). The advisory committee docket, RSPA–98–4407, is open for comments on all matters before the committees, including gathering line issues.

Specific Requests for Comment

The public meeting notices called attention to seven gathering line issues we believe are important. They are repeated below, along with additional clarification. We hope this will provide the public with the information needed to comment on the important gathering lines issues.

(1) The point where gas production ends and gas gathering begins.

Clarification. RSPA/OPS wants to adopt definitions of gas gathering line and gas production that together will serve to identify the beginning of a gas gathering line. We recognize that some state oil and gas commissions regulate gas production facilities for safety and operational purposes. RSPA/OPS does not wish to create any regulatory overlap, but seeks to develop a definition that leaves no gaps between oil and gas commission oversight and oversight by RSPA/OPS or its state partners. The end of production should be a fixed asset, one that is easy to identify and not easy to change.

(2) The point where gas gathering ends and gas transmission or distribution begins.

Clarification. We are seeking to develop a definition of gas gathering line that clearly identifies the endpoint of the line. The definition should be broad enough to apply to widely varying gathering system configurations, yet be simple enough to allow consistent application by regulators and pipeline operators.

(3) In defining "regulated gathering line," whether we should consider factors besides those specified by Congress. For example, should we consider population density (by census or house count), or, for hazardous liquid lines, potential for environmental damage.

Clarification. Congress specified factors that must be considered in defining "regulated gathering line," or in deciding which rural gathering lines should be regulated. These factors are "location, length of line from the well site, operating pressure, throughput, and composition of the gas or hazardous liquid." We are seeking comment on which, if any, additional factors should be considered. For example, we believe a high concentration of hydrogen sulfide (H_2S) is an important factor, and would like comments on ways to provide public safety in case of H_2S releases from gathering lines. RSPA/OPS is considering several alternatives for the definition of gas gathering. The first is the Hanley & Bird approach described above. We are seeking comments on whether dwelling density would be an appropriate way to define regulated segments, and, if so, what the density should be in relation to pipeline length. We are also seeking comment on whether a corridor approach, such as the class location approach in § 192.5, would be appropriate, and, if so, whether the corridor width should differ according to pipe hoop stress, such as 20% or 30% of specified minimum yield strength (SMYS). We are considering the type of location that could be impacted by a release of gas at points along a pipeline. We would like comments on how to calculate the risk zone of a gas gathering line, or impact area of a release, such as Part 192 requires for gas transmission lines in high consequence areas.

(4) Whether Part 195 should apply to rural gathering lines that operate at more than 20 percent of SMYS, or that could adversely affect an "unusually sensitive area" as defined in § 195.6?

(**Note:** certain crude oil gathering lines are, by law, exempt from safety regulation.)

Clarification. Should "regulated gathering line" include rural petroleum gathering lines that operate at more than 20 percent of SMYS, or that could adversely affect an "unusually sensitive area" as defined in § 195.6? If so, should Part 195 apply in its entirety to these lines?

(5) If you recommend safety regulations for rural gas or hazardous liquid gathering lines, to which rural lines would the regulations apply and why, approximately how many miles would be covered by the regulations, and what would be the estimated cost per mile of complying with the regulations?

Clarification. If you support regulation of rural gathering lines, we are interested in your justification for regulation, or why you think they need safety regulation. If you want to regulate only some rural gathering lines, we would like to know your rationale for deciding which rural gathering lines RSPA/OPS should regulate.

(6) The approximate mileage of rural gathering lines not now covered by Part 195.

Clarification. Not required.

(7) Whether safety regulations for gas or hazardous liquid rural gathering lines operating at low stress (*e.g.*, 20 percent or less of SMYS) or a specified pressure for plastic lines should be fewer and possibly less stringent than regulations for other rural gathering lines?

Clarification. We are considering a tiered approach to regulation in which

increasing portions of Part 192 or Part 195 would apply to pipelines depending on their risk to the public or the environment. If you think this would be a reasonable approach, we would like comments on which regulations should apply to different risk levels. If you think hoop stress should define risk, we would like comment on which regulations should apply according to different stress levels. For plastic pipe, we are interested in views on what the risk levels should be and how the regulations should vary and, if pressure were to define risk, what the pressure should be.

Other Considerations

Non-rural gathering lines. Under Parts 192 and 195, onshore gathering lines are considered rural—and unregulated—if they lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area, such as a subdivision, a business or shopping center, or community development. Conversely, some gathering lines or portions of lines that are inside these limits—and now regulated—are similar to rural lines in that they are not in, or close to, inhabited areas. Should the risk-based approach to regulating rural gathering lines also apply to the regulation of non-rural gathering lines? If so, assuming population density was the risk-based approach, what reduction in currently regulated mileage might result from particular density levels? What would be the associated savings in cost of compliance?

Compliance time. In the public meetings, we discussed time lines for compliance. What would be the appropriate time for operators to achieve compliance? We have also considered establishing milestones for achieving compliance, including early compliance dates for easily implemented regulations, coupled with longer times for more complex regulations requiring greater capital expenditures. Does this appear to be an appropriate path and, if so, what should these times be and which categories of regulations should fall into which time frames?

Authority: 49 U.S.C. Chapter 601 and 49 CFR 1.53.

Issued in Washington, DC, on January 29, 2004.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 04–2310 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040130031–4031–01; I.D. 012704D]

RIN 0648–AR92

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Proposed Emergency Rule to Maintain an Area Access Program for the Atlantic Sea Scallop Fishery in Hudson Canyon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed emergency rule; request for comments.

SUMMARY: This proposed emergency rule would implement measures to establish on March 1, 2004, the area access program for the Hudson Canyon Area, as proposed in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP). These measures would be in place for 180 days or until such time that Amendment 10 can be implemented, which will be published later in the **Federal Register**. This action is necessary to avoid localized overfishing of sea scallops in the Hudson Canyon Area, and would help ensure that fishing mortality rates do not exceed the target thresholds established in the FMP.

DATES: Comments must be received no later than 5 p.m., eastern standard time, February 19, 2004.

ADDRESSES: Comments on this proposed emergency rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope "Comments - Emergency Rule to Maintain an Area Access Program for the Atlantic Sea Scallop Fishery in Hudson Canyon." Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Draft Environmental Assessment (Draft EA) and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and any other documents supporting this action are available from the Regional Office at the address specified here, and are accessible via the Internet at *http://www.nero.nmfs.gov/ro/doc/nero.html.*

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135, e-mail *peter.christopher@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Hudson Canyon Area (and the Virginia Beach Area) were first closed to sea scallop fishing in 1998 by the National Marine Fisheries Service (NOAA Fisheries) through an interim rule, enacted in consultation with the New England Fishery Management Council (Council) to protect an abundance of small scallops that would have been vulnerable to excessive mortality if left unprotected. On March 29, 1999, Amendment 7 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) extended the closures until March 1, 2001, to allow scallops within the areas to grow and spawn. Frameworks 14 and 15, implemented on May 1, 2001, and March 1, 2003, respectively, reopened the Hudson Canyon and Virginia Beach Areas to controlled scallop fishing because the area closures had provided sufficient time for the scallop resource within the areas to grow to a size suitable for harvest.

The regulations for the sea scallop fishery for the 2003 fishing year (March 1, 2003–February 29, 2004) include, among other measures, an area access program to govern the fishery within the Hudson Canyon Sea Scallop Access Area (Hudson Canyon Area). The program establishes an overall total allowable catch (TAC) for the area, limits the number of trips that can be taken into the area, establishes a scallop trip limit, and establishes a minimum number of days-at-sea (DAS) that will be deducted for each access trip from the vessel's DAS allocation. The Council adopted Amendment 10 to the FMP in September 2003, and submitted it for review by the Secretary of Commerce (Secretary) on December 19, 2003. Among the measures proposed in Amendment 10 is a continuation of an area access program for the Hudson Canyon Area, with some revisions to the program. Amendment 10 has been made available to the public for comment through March 15, 2004.

The Council's December 2003 submission of Amendment 10 means that it will not be possible to implement the action, if approved, by March 1, 2004. Thus, the existing Hudson Canyon area access program will expire at the end of the fishing year (February 29, 2004) and, on March 1, 2004, the Hudson Canyon Area will open to fishing without an area access program. Absent another regulatory action, the

DAS allocations currently specified in the FMP will go into effect for limited access scallop vessels on March 1, 2004: 34, 14, and 3 DAS for full-time, part-time, and occasional vessels, respectively. Amendment 10 would, if approved, allocate an additional eight, three, and one DAS for use by full-time, part-time, and occasional vessels, respectively, in areas other than those under area management. Amendment 10 would also, if approved, specifically allocate 48, 12, and 12 DAS for use by full-time, part-time, and occasional vessels, respectively, within the Hudson Canyon Area, under an area access program.

Without this emergency action, the fishing that occurs in the Hudson Canyon Area between March 1 and the implementation of Amendment 10 (if approved) would inflict fishing mortality on the resource in addition to that proposed for the Hudson Canyon Access Area in Amendment 10. The additive impacts of this fishing could result in localized overfishing in the Hudson Canyon Area. Should Amendment 10 be disapproved, this proposed emergency action would allow controlled harvests from the Hudson Canyon Area, consistent with the status of the Hudson Canyon Area resource as analyzed in Amendment 10. This action would allow the resource within the Hudson Canyon Area to be harvested at appropriate levels, and would allow limited access vessels to fish at a level nearer to the mortality objectives for the stock.

Without continued controls on scallop fishing in the Hudson Canyon Area, NMFS is concerned about the impact of fishing on the scallop resource in this area, even with the reduced allocation of DAS. The area was initially closed to protect concentrations of juvenile scallops, which have since grown to harvestable size. For the past 3 fishing years, fishing has been allowed, but with controls. Amendment 10 proposes to maintain controls on effort and catch that would prevent the areas from being overfished. A lapse in controls may result in high fishing effort and mortality, which may be detrimental to the health of the scallop resource in the area. In fact, the reduced DAS allocations that will otherwise take effect on March 1, 2004, may serve as an incentive for some vessels to fish within the Hudson Canyon Area rather than elsewhere, and fishing effort could concentrate in the area. Controls within the area over the past few years have maintained catch rates that may be higher than those in other areas. In addition, the Hudson Canyon Area is a relatively short distance from ports in the Mid-Atlantic, and vessel owners may choose to fish in the Hudson Canyon Area to minimize the DAS used to cover steaming time to more distant fishing areas.

This emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is justified under and consistent with NOAA emergency rule guidelines published at 62 FR 44421 (August 21, 1997). These guidelines provide that a Magnuson-Stevens Act emergency action is justified in extremely urgent or special circumstances where substantial harm to or disruption of the resource, fishery or community would be caused in the time it would take to follow standard rulemaking procedures. It was not reasonably foreseeable that Amendment 10 would not be implemented by March 1, 2004, at the time it would have been necessary to initiate another type of action, such as a Secretarial amendment or framework adjustment. Therefore, the only procedure available to the agency for implementing these measures is a section 305(c) emergency action. As discussed above, failure to implement this emergency action would result in serious conservation and economic problems for the fishery.

Proposed Action

The proposed measures for the emergency action are summarized below:

Continuation of the existing notification and enrollment requirements of the current Hudson Canyon Controlled Access Area program, including twice hourly vessel monitoring system (VMS) polling;

Continuation of the existing observer program established for the current Hudson Canyon Controlled Access Area program;

Continuation of the existing VMS catch reporting requirements;

Continuation of the existing requirement for vessels taking a controlled area access trip to utilize twine top mesh with a minimum size of 10 inches (25.4 cm) to reduce finfish bycatch, primarily of flatfish;

An additional allocation of 48 DAS for full-time limited access scallop vessels to conduct four trips within the Hudson Canyon Area only;

An additional allocation of 12 DAS for part-time and occasional limited access vessels to conduct one trip within the Hudson Canyon area only;

Allocation of DAS in trip-length blocks of 12 days, with each vessel making an Access Area trip to be charged 12 DAS for each trip, regardless of actual trip length;

Establishment of a trip possession limit for limited access vessels of 18,000 lb (8,165 kg) (consistent with a 1,500-lb (680-kg) per day catch rate);

Establishment of a 400-lb (181-kg) possession limit for General category vessels fishing in the Hudson Canyon Area (this measure would make the possession limit for these vessels consistent with the existing possession limit in open fishing areas).

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required under section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this emergency proposed rule, if adopted, would have on small entities. A copy of the IRFA is available from NMFS (*see* **ADDRESSES**). A summary of the analysis follows:

The IRFA describes this action, sets forth why it is being taken, and the legal basis for it. A description of the action, why it is being considered, and the legal basis for this action appear in the beginning of this section in the preamble and in the **SUMMARY** section and is not repeated here.

The measures proposed in this emergency action could impact any commercial vessel issued a Federal sea scallop vessel permit. All of these vessels are considered small business entities for purposes of the IRFA because all of them grossed less than $3.5 million according to the dealer reports for the 2001 and 2002 fishing years. Therefore, the analysis of impacts on vessels in the environmental assessment and other supporting documents for this action are relevant to this IRFA. There are two main components of the scallop fleet: Vessels eligible to participate in the limited access sector of the fleet and vessels that participate in the open access General Category sector of the fleet. Limited access vessels are issued permits to fish for scallops on a Full-time, Part-time or Occasional basis. In 2001, there were 252 Full-time permits, 38 Part-time permits, and 20 Occasional permits. In 2002, there were 270 Full-time permits, 31 part time permits, and 19 Occasional permits. Because the fishing year ends on the last day of February of each year, 2003 vessel permit information was incomplete at the time the Amendment 10 analysis was completed. Much of the economic impacts analysis is based on the 2001 and 2002 fishing years; 2001 and 2002 were the last 2 years with complete permit information. According

to the most recent vessel permit records for 2003, there were 278 Full-time limited access vessels, 32 Part-time limited access vessels, and 16 Occasional vessels. In addition, there were 2,293, 2,493, and 2,257 vessels issued permits to fish in the General Category in 2001, 2002, and 2003, respectively. Annual scallop revenue for the limited access sector averaged from $615,000 to $665,600 for Full-time vessels, $194,790 to $209,750 for Part-time vessels, and $14,400 to $42,500 for Occasional vessels during the 2001 and 2002 fishing years. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than $3.5 million per vessel.

This action does not contain any new collection-of-information requirements, implement new reporting or recordkeeping measures, or create other compliance requirements that have not already been implemented and approved in prior actions.

Potential economic impacts are discussed relative to no action, defined as the continuation of the existing DAS schedule (as specified in Amendment 7) with no additional controls on vessels fishing within the boundaries of the Hudson Canyon Access Area. The combined economic impacts of the proposed action relative to the no action alternative are positive for the majority of small business entities in the scallop fishing industry. A third alternative would close the Hudson Canyon Access Area to fishing, pending development of measures to control fishing effort in the area. This alternative may have more negative economic impacts relative to the no action alternative due to the lack of access to the area that contains larger, more valuable scallops. However, vessel owners would likely offset the lack of access to the higher concentrations of large scallops by shucking and landing the larger and more valuable scallops (highgrading). Therefore, the closure alternative would not be significantly different than the no action alternative.

Relative to taking no action, the proposed action is expected to benefit most vessels in the scallop fishery by increasing flexibility and revenues. The emergency action would increase overall DAS allocations by allowing access to the Hudson Canyon Access Area with DAS that can only be used in the Hudson Canyon Access Area. Additional DAS, equal to the DAS that would be implemented under the no action alternative can be used in other open areas. Impacts may vary depending upon the relative mobility of the vessels in accessing fishing areas because the Hudson Canyon Access Area is more accessible to some vessels than others.

The proposed emergency action would establish two distinct DAS allocations for scallop vessels. Full-time, part-time, and occasional scallop vessels would be allocated 34, 14, and 3 DAS, respectively, to be used in all open areas outside of the Hudson Canyon Access Area. For fishing in the Hudson Canyon Access Area, full-time vessels would be allocated four trips equaling 48 DAS, and part-time and occasional vessels would be allocated one trip equaling 12 DAS. Compared to no action, which would allow only 34 DAS to be fished throughout all open areas, including the area that would be the Hudson Canyon Access Area, the proposed action would have higher revenues resulting from additional DAS allocations. The economic analysis included in Amendment 10 estimates that the annual revenue derived from access to the Hudson Canyon Access Area would be approximately $48 million in 2004. This $48 million in revenues would be additional to revenues generated from the DAS used outside of the Hudson Canyon Access Area. Amendment 10 also estimates that the scallop revenue from even one access area trip could amount to more than 10% of the annual revenue in 2004.

Vessels holding General Category scallop permits would be authorized to harvest up to 400 lb (181.4 kg) of scallop meats from open areas and controlled access areas. Expected revenues for those vessels would be the same under the proposed action and the no action alternative because vessels would be able to fish in any open area for 400 lb (181.4 kg) of scallops under both alternatives. However, allowing access to the Hudson Canyon Access Area could have positive economic impacts on these vessels by increasing their flexibility and ability to fish in different areas to increase scallop revenues. Positive impacts would only be realized by the General Category fleet if vessels take advantage of the opening of the area.

The RFA requires consideration of alternatives that accomplish the stated objectives of the applicable statutes and that minimize economic impacts on small entities. The IRFA should identify any significant alternatives that would minimize economic impacts on small entities, if such alternatives exist. If there is an alternative with less impact on small entities that meets the stated objectives, the IRFA should explain why the proposed measure was selected instead of the alternative with less impact. A rationale should be provided to explain any unavoidable adverse effects on small entities that are necessary to achieve the objectives. The alternatives to the proposed action are the no action alternative and closure of the Hudson Canyon Access Area to scallop fishing. Neither the no-action nor the closure alternative would minimize the economic impacts on small entities. Under both non-preferred alternatives, lower overall DAS allocations would similarly constrain landings and revenues. For both the no-action and the closure alternatives, DAS allocations of 34, 14, and 3 DAS for full-time, part-time, and occasional vessels would reduce annual revenues to approximately $110 million from $158 million, compared to the proposed action. For the no-action alternative, the harvest of larger, more valuable scallops from the Hudson Canyon Access Area would not offset the revenue losses.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 2, 2004.

John Oliver,

Deputy Assistant Administrator for Operation, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (h)(30), (h)(31), and (i)(8) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(h) * * *

* * * * *

(30) Land per trip more than 400 lb (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops as specified in § 648.52(e) in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(31) Possess more than 400 lb. (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in

§ 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *

(i)* * *

* * * * *

(8) Possess, retain, or land per trip no more than 400 lb (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops in or from the areas described in § 648.57.

* * * * *

§ 648.52 [Amended]

3. In § 648.52, paragraph (e) is removed.

4. Section 648.53 is revised to read as follows:

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or Occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(b) *Open area DAS allocations.* (1) Total DAS to be used in all areas other than those specified in § 648.57 will be specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (Full-time, Part-time, or Occasional) shall be allocated, for each fishing year, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its allocated DAS, may leave port without being assessed a DAS, as long as it does not possess or land more than 400 lb (181.4 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops and complies with all other requirements of this part. The annual DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

	2003	2004	2005	2006	2007	2008
DAS Category						
Full-time	120	34	35	38	36	60
Part-time	48	14	14	15	17	24
Occasional	10	3	3	3	4	5

(c) *Sea Scallop Access Area DAS allocations.* Vessels fishing in a Sea Scallop Access Area specified in § 648.57, under the Sea Scallop Area Access Program specified in § 648.58, are allocated additional DAS to fish only within each Sea Scallop Access Area, as specified in § 648.58(a)(3).

(d) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in § 648.55.

(e) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. DAS carried over into the next fishing year may not be used in the Hudson Canyon Access Area. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless participating in the Area Access Program described in § 648.58, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

5. In § 648.57, paragraph (b) is removed and reserved, and paragraph (a) introductory text is revised to read, as follows:

§ 648.57 Closed and regulated areas.

(a) Hudson Canyon Sea Scallop Access Area. From March 1, 2004, through August 2, 2004, except as provided in § 648.58, no vessel may fish for scallops in or possess or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

6. Section 648.58 is revised to read as follows:

§ 648.58 Sea Scallop Area Access Program requirements.

(a) From March 1, 2004, through August 2, 2004, vessels issued a limited access scallop permit may fish in the Sea Scallop Access Areas specified in § 648.57 when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9) and (b) through (e) of this section. Unless otherwise restricted under this part, vessels issued General Category scallop permits may fish in the Sea Scallop Access Areas specified in § 648.57, subject to the possession limit specified in § 648.52(b).

(1) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in any Sea Scallop Access Area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas if it is determined that there is insufficient time to provide such notification prior to an access opening. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit

holder letter issued by the Regional Administrator.

(ii) In addition to the information described in paragraph (a)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, the vessel owner or operator shall declare a Sea Scallop Access Area trip through the VMS less than 1 hour prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of trips.* Except as provided in paragraph (c) of this section, a vessel is limited to the following number of trips and automatic DAS deduction into the Hudson Canyon Sea Scallop Access Area specified in § 648.57:

(i) *Full-time vessels.* A Full-time vessel is restricted to a total of 4 trips, equaling an automatic deduction of 12 days per trip for a total of 48 DAS, into the Hudson Canyon Access Area.

(ii) *Part-time vessels.* A Part-time vessel is restricted to a total of 1 trip, equaling an automatic deduction of 12 days per trip for a total of 12 DAS, into the Hudson Canyon Access Area.

(iii) *Occasional scallop vessels.* An Occasional vessel is restricted to a total of 1 trip, equaling an automatic deduction of 12 days per trip for a total of 12 DAS, into the Hudson Canyon Access Area.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops from outside the Hudson Canyon Access Area during that trip and must not enter or exit the Hudson Canyon Access Area fished more than once per trip.

(5) *Possession and landing limits.* After declaring a trip into the Hudson Canyon Access Area, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (9,525 kg) of scallop meats per trip. No vessel fishing in the Hudson Canyon Access Area may possess or land, more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS demarcation line.

(6) *Gear restrictions.* The vessel must fish with or possess scallop dredge or trawl gear only in accordance with the restrictions specified in § 648.51(a) and (b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed and unavailable for immediate use as specified in § 648.23(b), unless there is a compelling safety reason.

(8) *Off-loading restrictions.* The vessel may not off-load its catch from a Sea Scallop Access Area trip at more than one location per trip.

(9) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24–hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information: Total pounds/kilograms of scallop meats kept, total number of tows and the Fishing Vessel Trip Report log page number.

(b) *Accrual of DAS.* For each Hudson Canyon Access Area trip, a vessel on a Hudson Canyon Access Area trip shall have 12 DAS deducted from its access area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS used during the trip.

(c) *Increase of possession limit to defray costs of observers.*—(1) *Observer set-aside limits by area.* The observer set-aside for the Hudson Canyon Access Area is 187,900 lb (85.2 mt).

(2) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (c)(1) of this section. Owners of limited access scallop vessels will be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator will notify owners of limited access vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(d) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit shall be polled at least twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs for the polling.

[FR Doc. 04–2411 Filed 2–2–04; 1:07 pm]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 23
Wednesday, February 4, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bighorn National Forest; Wyoming; Woodrock Project EIS

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent.

SUMMARY: The Forest Supervisor of the Bighorn National Forest, responsible official for the Woodrock Project EIS, is designating the Tongue District Ranger as the responsible official for the action listed in the **Federal Register** Friday April 4, 2003, volume 68, number 65, pp. 16464 to 16465. All other project proposed actions are unchanged.

DATES: Scoping and the comment period have been completed. The Forest Service estimates the Final EIS will be filed approximately September of 2004.

FOR FURTHER INFORMATION CONTACT: Scott Hill, EIS Team Leader Woodrock Project, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY, 82801, electronic mail: *shill02@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Woodrock Project proposed to implement the Forest Plan. The project includes: implementation of Forest Plan allocations, implementing past forest management decisions and silvicultural prescriptions, improve watershed conditions, improve travel management and existing road systems, and improve or maintain the forested vegetation within the forest plan standard and guidelines and other legal requirements.

Proposed Action

The Forest Service proposes to: Improve diversity of forested vegetation by mimicking scale and intensity of natural disturbance patterns within the project area; reduce impacts to watershed conditions from roads and trails by changing travel management restrictions, reconstructing, restricting travel, or decommissioning existing roads where problems cannot be mitigated; on roads and trails; harden, relocate, or close dispersed campsites to meet Forest Plan direction; timber harvest of stands to produce wood fiber and reduce the spread of forest pests on approximately 1,800 acres.

Responsible Official

The designated responsible official for this project is the Tongue District Ranger, Bighorn National Forest, National Forest, 2013 Eastside 2nd Street, Sheridan, WY, 82801.

Nature of Decision To Be Made

The District Ranger will decide: If changes should be made to the transportation system within the area; whether and where timber harvest should be implemented; if timber harvest occurs, what silvicultural systems and size of openings would be created; what noncommercial vegetation and fuels treatments should be taken; and what watershed improvements should be undertaken. He will decide when, or if, any management activities would take place, what mitigation measures would be implemented to address concerns, and whether the action requires amendment(s) to the Bighorn Forest Plan.

Scoping Process

The NOA for the DEIS was published in the **Federal Register** November 11, 2003, on page 63085. The NOI was originally mailed and posted in the **Federal Register** on April 4, 2003. The Woodrock project was initially developed as an Environmental Assessment. Scoping notices were sent on September 2, 1997, inviting comments from Federal, State and local agencies, special interest groups and individuals who had expressed interest in National Forest projects in the area. Scoping notices were sent to newspapers across northern Wyoming. A field trip was held on September 30, 1997. A public meeting addressing travel management in the Woodrock area was held at Bear Lodge on October 7, 2000. The project has been listed in the Quarterly Schedule of Proposed Actions from 1997 to the present.

A 60-day review period for comments on the Draft EIS was completed January 9, 2004. Comments received are being considered and included in documentation of the Final EIS. Comments which have been received, including the names and addresses of those who commented, are considered part of the public record on this proposal and are available for public inspection (Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21).

Dated: January 29, 2004.

Bernard R. Bornong,

Acting Forest Supervisor.

[FR Doc. 04–2245 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Maurys Fuels and Vegetation Management Project, Ochoco National Forest, Crook County; OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement.

SUMMARY: On January 16, 2004, the USDA, Forest Service, Ochoco National Forest, published a notice of intent in **Federal Register** (69 FR 2563) to prepare an Environmental Impact Statement (EIS) on a proposal to manage the fuels and vegetation in the west half of the West Maury Mountains. The original notice of intent identified 7,650 acres of fuels treatment; the correct number is 17,890 acres.

DATES: The original notice of intent asked that comments concerning the scope of the analysis would be most helpful if received by February 16, 2004. To provide adequate time for meaningful participation, comments are now due March 1, 2004.

ADDRESSES: Send written comments to Arthur Currier, District Ranger, Lookout Mountain District, Ochoco National Forest, 3160 NE., Third Street, Prineville, Oregon 97754.

FOR FURTHER INFORMATION CONTACT: Bryan Scholz, Interdisciplinary Team leader, phone: (541) 416–6500, or e-mail: *comments-pacificnorthwest-ochoco@fs.fed.us.*

Dated: January 28, 2004.

Craig Courtright,

Acting Forest Supervisor.

[FR Doc. 04–2243 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, February 16, 2004. The Madera Resource Advisory Committee will meet at the Yosemite Bank, Oakhurst, CA. The purpose of the meeting is: Review RAC process for accepting/reviewing proposals, review progress of FY 2002 accounting, monitoring and evaluation, Arrowhead presentation, and review Sierra Business Council book.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, February 16, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Yosemite Bank, 40061 Highway 40, Oakhurst, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643; (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review RAC process for accepting/reviewing proposals, (2) review progress of FY 2002 accounting, (3) monitoring and evaluation, (4) Arrowhead presentation, and (5) review of Sierra Business Council book. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 28, 2004.

David W. Martin,

District Ranger.

[FR Doc. 04–2244 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Wednesday, February 18, 2004, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or e-mail *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

Dated: January 29, 2004.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 04–2401 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue ten (10) revised and two (2) new conservation practice standards in Section IV of the FOTG. The revised standards are: Conservation Crop Rotation (328), Residue Management, Mulch-Till (329B), Residue Management, Ridge-Till (329C), Contour Buffer Strip (322), Residue Management, Seasonal (344), Riparian Forest Buffer (391), Recreation Land Grading and Shaping (566), Recreation Trail and Walkway (568), Nutrient Management (590), and Subsurface Drain (606). The new standards are: Cross Wind Trap Strips (589C) and Interim Standard Agrichemical Handling Facility (702). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278; telephone: 317–290–3200. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *Darrell.brown@in.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: January 21, 2004.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 04–2224 Filed 2–3–04; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee (Time Change)

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Indiana Advisory Committee to the Commission will convene a meeting from 1 p.m. until 5 p.m. on Thursday, February 26, 2004, at the Julia Carson Center, 300 East Fall Creek Parkway, Indianapolis, Indiana 46205. The purpose of the meeting is to discuss civil rights issues of interest and plan future activities. The original notice stated the meeting time from 9 a.m. to 5 p.m. this notice is being issued to inform the public of this time change.

Persons desiring additional information should contact Hollis Hughes, Committee Chairperson at 574–232–8201 or Constance M. Davis, Director of the Midwestern Regional Office 312–353–8311, (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at

least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 29, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–2211 Filed 2–3–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri and Oklahoma Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Missouri and Oklahoma Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Wednesday, February 25, 2004. The purpose of the conference call is to conduct a subcommittee planning meeting for a regional "Midwest Civil Rights Listening Tour" in 2004.

This conference call is available to the public through the following call-in number: 1–800–497–7780, access code 21562657. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Wednesday, February 18, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC January 23, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–2209 Filed 2–3–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa, Kansas and Nebraska Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Iowa, Kansas and Nebraska Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Thursday, February 26, 2004. The purpose of the conference call is to conduct a subcommittee planning meeting for a regional "Midwest Civil Rights Listening Tour" in 2004.

This conference call is available to the public through the following call-in number: 1–800–659–8292, access code 21536083. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Thursday, February 19, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 23, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–2210 Filed 2–3–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: License Exception, Humanitarian Donations.

Agency Form Number: None.

OMB Approval Number: 0694–0033.

Type of Request: Extension of a currently approved collection of information.

Burden: 10 hours.

Average Time Per Response: 5 hours per response.

Number of Respondents: 2 respondents.

Needs and Uses: Section 7(g) of the EAA, as amended by the Export Administration Amendments Act of 1985 (Public Law 99–64), exempts from foreign policy controls exports of donations to meet basic human needs. Since the re-write of the Export Administration Regulations, an exporter is permitted to ship humanitarian goods identified in Supplement 2 to Part 740, to embargoed destinations using the new License Exception procedures. This regulation reduces the regulatory burden on these exporters by enabling them to make humanitarian donations with only minimal recordkeeping.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6025, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: January 30, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–2281 Filed 2–3–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD DECEMBER 17, 2003–JANUARY 21, 2004

Firm name	Address	Date petition accepted	Product
Automated Industrial Technologies, Inc.	1067 Winewood Road, Forest, VA 24551.	Jan. 14, 04	Machine tool attachments for the automotive industry.
Belleville Wire Cloth Co., Inc	18 Rutgers Avenue, Cedar Grove, NJ 07009.	Jan. 12, 04	Seals, high temperature grids, screens and filters of stainless steel wire mesh.
Burgess Manufacturing of Oklahoma, Inc.	1250 Roundhouse Road, Guthrie, OK 73044.	Dec. 17, 03	Wooden pallets.
Conard Corporation (The) ...	101 Commerce Street, Glastonbury, CT 06033.	Dec. 23, 03	Precision thin metal photochemical machined processed electronic devices for the telecommunications, aerospace, aircraft, electronics and computer industries.
Electri-Cord Manufacturing, Inc.	312 East Main Street, Westfield, PA 16950.	Jan. 12, 04	Electrical cords.
Homecrest Industries, Inc	140 Madison Avenue SE, Wadena, MN 56482.	Dec. 22, 03	Outdoor residential metal furniture.
Innerspec Technologies, Inc	4004 Murray Place, Lynchburg, VA 24501.	Dec. 22, 03	Ultrasonic Inspection equipment and parts for the steel industry.
Ioline Corporation	14140 NE 200th Street, Woodinville, WA 98072.	Dec. 31, 03	Sign cutters.
Kleen-Tex Industries, Inc	1516 Orchard Hill Road, LaGrange, GA 30240.	Jan. 5, 04	Cotton ship towels, mops and matting, and nylon, cotton and rubber matting.
Met Weld, Inc	5727 Ostrander Road, Altamont, NY 12009.	Jan. 5, 04	Fuel processing systems that separate, filter or purify gas, oil or liquids.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter.

A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 29, 2004.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 04–2246 Filed 2–3–04; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2004]

Foreign-Trade Zone 36—Galveston, TX; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Trustees of the Galveston Wharves, grantee of Foreign-Trade Zone 36, requesting authority to expand its zone in the Galveston, Texas, area, within the Galveston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 23, 2004.

FTZ 36 was approved on March 8, 1978 (Board Order 129, 43 FR 20525, 5/12/78). The reissuance of the grant of authority to the Board of Trustees of the Galveston Wharves was approved on February 22, 2000 (Board Order 1080, 65 FR 11548, 3/3/00). The zone currently consists of 2 sites in the Galveston area: *Site 1* (8 acres, 3 tracts)—within Galveston Harbor, west end of port complex on Galveston Island; *Site 2* (876 acres, 6 tracts)—within Galveston Harbor on Pelican Island.

The applicant is now requesting authority to remove one tract (tract 3, 1.14 acres) from Site 1 and to add 96 acres (1 tract) to Site 2. The applicant also requests to include an additional site (74 acres, 2 tracts), located at Scholes International Airport, approximately 4 miles from Site 1 at Galveston Island. The majority of the sites are owned by the City of Galveston. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is April 5, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 19, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and Port of Galveston, 123 Rosenberg Avenue, 8th Floor, Galveston, Texas 77550.

Dated: January 26, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–2276 Filed 2–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Report of Requests for Restrictive Trade Practice or Boycott— Single or Multiple Transactions

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 5, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, Room 6025, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, ICB Liaison for BIS, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information obtained from this collection authorization is used to carefully and accurately monitor requests for participation in foreign boycotts against countries friendly to the U.S. which are received by U.S. persons. The information is also used to identify trends in such boycott activity and to assist in carrying out U.S. policy of opposition to such boycotts.

II. Method of Collection

Submitted on forms.

III. Data

OMB Number: 0694–0012.

Form Number: BIS 621–P, BXA 621–P, BIS 6051–P, BXA 6051–P, BIS–6051 P–a, BXA–6051 P–a.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1,243.

Estimated Time Per Response: 1 to 1.5 hours per response.

Estimated Total Annual Burden Hours: 1,371.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 30, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–2282 Filed 2–3–04; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–865]

Notice of Initiation of Antidumping Duty Investigation: Outboard Engines from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigation.

EFFECTIVE DATE: February 4, 2004.

FOR FURTHER INFORMATION CONTACT: James Kemp at (202) 482–5346 or Salim Bhabhrawala at (202) 482–1784, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

INITIATION OF INVESTIGATION:

The Petition

On January 8, 2004, the U.S. Department of Commerce (the Department) received a petition filed in proper form by Mercury Marine, a division of Brunswick Corporation (the petitioner). The Department received supplemental information from the petitioner on January 20, and January 22, 2004.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of outboard engines from Japan are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Japan are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act and the petitioner demonstrated sufficient industry support with respect to the antidumping investigation that the petitioner is requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Period of Investigation

The period of investigation (POI) is January 1, 2003, through December 31, 2003.

Scope of Investigation

For the purpose of this investigation, the products covered are outboard engines (also referred to as outboard motors), whether assembled or unassembled; and powerheads, whether assembled or unassembled. The subject engines are gasoline-powered spark-ignition, internal combustion engines designed and used principally for marine propulsion for all types of light recreational and commercial boats, including, but not limited to, canoes, rafts, inflatable, sail and pontoon boats. Specifically included in this scope are two-stroke, direct injection two-stroke, and four-stroke outboard engines.

Outboard engines are comprised of (1) a powerhead assembly, or an internal combustion engine, (2) a midsection

assembly, by which the outboard engine is attached to the vehicle it propels, and (3) a gearcase assembly, which typically includes a transmission and propeller shaft, and may or may not include a propeller. To the extent that these components are imported together, but unassembled, they collectively are covered within the scope of this investigation. An "unassembled" outboard engine consists of a powerhead as defined below, and any other parts imported with the powerhead that may be used in the assembly of an outboard engine.

Powerheads are comprised of, at a minimum, (1) a cylinder block, (2) pistons, (3) connecting rods, and (4) a crankshaft. Importation of these four components together, whether assembled or unassembled, and whether or not accompanied by additional components, constitute a powerhead for purposes of this investigation. An "unassembled" powerhead consists of, at a minimum, the four powerhead components listed above, and any other parts imported with it that may be used in the assembly of a powerhead.

The scope does not include parts or components (other than powerheads) imported separately.

The outboard engines and powerheads subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8407.21.0040 and 8407.21.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Product Coverage

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, following the filing requirements outlined in section 351.303 of the Department's regulations. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of a preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petition covers a single class or kind of merchandise, outboard engines, as defined in the "Scope of Investigation" section, above. The petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Further, based on our analysis of the information presented to the Department by the petitioner, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioner has established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Office 5 AD/CVD Enforcement, Initiation Checklist: Outboard Engines from Japan (January 28, 2004) (Initiation Checklist) at Attachment I, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

[1] *See USEC, Inc., v. United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988). *See also High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Constructed Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. and home market prices are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and revise the margin calculations, if appropriate.

Constructed Export Price

The petitioner based constructed export price (CEP) on U.S. dealer list prices issued by Japanese companies during the POI. The petitioner determined that CEP was appropriate because sales were made in the United States through affiliated resellers. Starting with base prices from the dealer lists, the petitioner made adjustments for various discounts and rebates, foreign inland freight, ocean freight (including insurance), and indirect selling expenses incurred in the United States. The petitioner made no adjustment to CEP for U.S. inland freight charges because this information was not readily available.

Normal Value

With respect to normal value (NV), the petitioner also started with Japanese dealer list prices issued during the POI by Japanese producers of outboard engines. The petitioner stated the prices in yen, their original currency, and converted them to U.S. dollars, using a single average exchange rate for the POI derived from monthly average exchange rates published by the Board of Governors of the Federal Reserve Board, after making adjustments for discounts and inland freight.

Although the petitioner provided margins based on a price-to-price comparisons, the petitioner also provided information demonstrating reasonable grounds to believe or suspect that sales of outboard engines in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. *See* "Initiation of Cost Investigation" section *infra* for further discussion.

The estimated dumping margins for subject merchandise from Japan, based on a comparison of CEP and NV, ranged from 11.80 percent to 41.50 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of outboard engines from Japan are being, or are likely to be, sold at less than fair value in the United States.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home market were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation. Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacture (COM), selling, general, and administrative (SG&A) expenses, and packing expenses. The petitioner based its cost buildup on an outboard engine model produced by Yamaha Motor Co., Ltd. (Yamaha). However, the petitioner was unable to obtain Yamaha's manufacturing costs and, instead, calculated COM based on the experience of a U.S. producer of outboard engines, adjusted for known differences between costs incurred to manufacture outboard engines in the United States and Japan. *See* Petition at Exhibit I-10-A and Initiation Checklist at 9. To calculate the depreciation, SG&A, and financial expenses, which were also included in the cost buildup, the petitioner used information from Yamaha's 2003 financial statements.

The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the Uruguay Round Agreement Action, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' ... exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.*

Based upon a comparison of the price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise from Japan and sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the declining trends in operating profits, net sales volumes, domestic prices, revenue, production employment, capacity utilization, and domestic market share. The allegation of injury and causation is supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegation and supporting evidence regarding material injury and causation and determined that this allegation is properly supported by adequate evidence and meets the statutory requirements for initiation. *See* the Initiation Checklist at Attachment II.

Initiation of Antidumping Investigation

Based upon our examination of the petition, we have found that it meets the requirements of section 732 of the Act. *See* the Initiation Checklist. Therefore, we are initiating an antidumping duty investigation to determine whether imports of outboard engines from Japan are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representative of the government of Japan. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than February 23, 2004, whether there is a reasonable indication that imports of outboard engines from Japan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 28, 2004.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–2277 Filed 2–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–829]

Notice of Countervailing Duty Order: Prestressed Concrete Steel Wire Strand From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at (202) 482–2209 or Alicia Kinsey at (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise subject to this order is prestressed concrete steel wire (PC strand), which is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under this order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Countervailing Duty Order

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on December 8, 2003, the Department published its final determination in the countervailing duty investigation of prestressed concrete steel wire strand from India. *See Notice of Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India,* 68 FR 68356 (December 8, 2003). On January 21, 2003, the United States International Trade Commission (USITC) notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States suffered material injury as a result of subsidized imports of prestressed concrete steel wire strand from India.

Therefore, countervailing duties will be assessed on all unliquidated entries of prestressed concrete steel wire strand from India entered, or withdrawn from warehouse, for consumption on or after July 8, 2003, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register,** and before November 5, 2003, the date the Department instructed the U.S. Customs and Border Protection (CBP) to discontinue the suspension of liquidation in accordance with section 703(d) of the Act, and on all entries of subject merchandise made on or after the date of publication of the USITC's final injury determination in the **Federal Register.** Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of prestressed concrete steel wire strand made on or after November 5, 2003, and prior to the date of publication of the USITC's final injury determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective November 5, 2003, of the suspensions of liquidation.

In accordance with section 706 of the Act, the Department will direct the CBP to reinstitute the suspension of liquidation for prestressed concrete steel wire strand from India effective the date of the USITC's final injury determination in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of the USITC's final injury determination in the **Federal Register,** the CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rate noted below. The cash deposit rate is as follows:

Producer/exporter	Cash deposit rate
All Producers/Exporters.	62.92 percent *ad valorem*

This notice constitutes the countervailing duty order with respect to prestressed concrete steel wire strand from India, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit of the Main Commerce Building for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is issued and published in accordance with sections 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: January 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–2278 Filed 2–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123103B]

Endangered Species; Permit No. 1190

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 1190 submitted by the NMFS Pacific Islands Region, 1601 Kapiolani Blvd., Ste. 1110, Honolulu, HI 96814 has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289, fax (301) 713–0376; and Pacific Islands Region, NMFS, 1601

Kapiolani Blvd., Ste. 1110, Honolulu, HI 96814, phone (808) 973–2935; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301) 713–1401 or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the Permit from March 31, 2004, to March 31, 2005, for takes of green (*Chelonia mydas*), loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*) and olive ridley (*Lepidochelys olivacea*) sea turtles.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the threatened and endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 29, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–2305 Filed 2–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012004A]

Marine Mammals; File No. 1019–1657

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Daniel J. Cox, Natural Exposures, 16595 Brackett Creek Road, Bozeman, Montana 59715, has been issued an amendment to photography Permit No. 1019–1657–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and,

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

On December 27, 2001, notice was published in the **Federal Register** (66 FR 66888) that the above-named applicant had submitted a request for a permit to take one species of marine mammal by Level B harassment during the course of commercial photographic activities in San Simeon, Piedras Blancas, Ano Nuevo State Reserve, Point Reyes National Seashore, the Farallones and Channel Islands, California. The requested permit was issued on April 9, 2002 (67 FR 19167), under the authority of Section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*). This permit amendment extends the expiration date to January 31, 2005.

Dated: January 23, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–2304 Filed 2–3–04; 8:45am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, February 10, 2004, 9 a.m.–11 a.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW., 8th Floor, Room 8410, Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks
II. Administer Oath to Board Members
III. Consideration of Prior Meeting's Minutes
IV. Committee Reports
V. CEO Report
VI. Panel Discussion
VII. Recognition of Departing Board Members
VIII. Public Comment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Thursday, February 5, 2004.

FOR FURTHER INFORMATION CONTACT: David Premo, Public Affairs Associate, Public Affairs, Corporation for National and Community Service, 8th Floor, Room 8612C, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–5000 ext. 278. Fax (202) 565–2784. TDD: (202) 565–2799. E-mail: *dpremo@cns.gov.*

Dated: February 2, 2004.

Frank R. Trinity,

General Counsel.

[FR Doc. 04–2549 Filed 2–2–04; 3:59 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 10/135,012, entitled "Oligomeric Hydroxy Arylethers Phthalonitriles and Synthesis Thereof", Navy Case No. 83,013.

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: January 29, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–2247 Filed 2–3–04; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 1699 (January 12, 2004).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., February 3, 2004.

CHANGES IN THE MEETING: On February 9, 2004, at 9 a.m., the Board will hear from the Department of Energy's Office of Environment, Safety, and Health concerning its roles and responsibilities in the oversight process of defense nuclear facilities. This testimony was previously scheduled for the February 3, 2004, public meeting. The meeting will be held at the Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: February 2, 2004.

John T. Conway,

Chairman.

[FR Doc. 04–2406 Filed 2–2–04; 10:59 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 5, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 29, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Client Assistance Program (CAP) Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 56. *Burden Hours:* 350.

Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2411. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–2214 Filed 2–3–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Carol M. White Physical Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215F.

DATES: *Applications Available:* February 4, 2004.

Deadline for Transmittal of Applications: March 22, 2004.

Deadline for Intergovernmental Review: May 19, 2004.

Eligible Applicants: Local educational agencies (LEAs) and community-based organizations (CBOs), including faith-based organizations provided that they meet the applicable statutory and regulatory requirements.

Estimated Available Funds: $69,587,000. Contingent upon the availability of funds, we may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 230.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Carol M. White Physical Education Program provides grants to initiate, expand, or improve physical education programs, including after-school programs, for students in one or more grades from kindergarten through 12th grade in order to help students make progress toward meeting State standards for physical education.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), the following priority is from sections 5503 and 5504(a) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA). (20 U.S.C. 7261b, 7261c)

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

The initiation, expansion, or improvement of physical education programs (including after-school programs) in order to make progress toward meeting State standards for physical education for kindergarten through 12th grade students by providing equipment and support to enable students to participate actively in physical education activities and providing funds for staff and teacher training and education.

A physical education program funded under this absolute priority must provide for one or more of the following:

(1) Fitness education and assessment to help students understand, improve, or maintain their physical well-being.

(2) Instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, and social or emotional development of every student.

(3) Development of, and instruction in, cognitive concepts about motor skills and physical fitness that support a lifelong healthy lifestyle.

(4) Opportunities to develop positive social and cooperative skills through physical activity participation.

(5) Instruction in healthy eating habits and good nutrition.

(6) Opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. This priority is from 34 CFR 75.225. For FY 2004 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(ii) we award an additional five points to an application depending on how well the application meets this priority.

This priority is for applications from novice applicants.

The term *novice applicant* means any applicant for a grant from the U.S. Department of Education that:

(1) has never received a grant or subgrant under the program from which it seeks funding;

(2) has never been a member of a group application, submitted in accordance with 34 CFR 75.127–75.129, that received a grant under the program from which it seeks; and

(3) has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under this program (Carol M. White Physical Education Program or its predecessor program, the Physical Education for Progress Program). For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127 through 75.129, to qualify as a novice applicant a group includes only parties that meet the requirements listed above.

Program Authority: 20 U.S.C 7261–7261f.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR, part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $69,587,000. Contingent upon the availability of funds, we may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 230.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs and CBOs, including faith-based organizations, provided that they meet the applicable statutory and regulatory requirements.

2. *Cost Sharing or Matching:* In accordance with Section 5506 of the ESEA, the Federal share of project costs may not exceed (1) 90 percent of the total cost of a program for the first year for which the program receives assistance; and (2) 75 percent of such costs for the second and each subsequent such year. In accordance with Section 5507 of the ESEA, funds made available under this subpart must be used to supplement, and not supplant, any other Federal, State, or local funds available for physical education activities.

3. *Other:* Extracurricular activities, such as team sports and Reserve Officers' Training Corps (ROTC) program activities, will not be considered as part of the curriculum of a physical education program eligible for assistance under this program. An application for funds may provide for the participation, in the activities funded, of (a) students enrolled in private nonprofit elementary schools or secondary schools, and their parents and teachers; or (b) home-schooled students, and their parents and teachers.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application via the Internet or from the ED Publication Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/programs/whitephysed/index.html*. To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.215F.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER**

INFORMATION CONTACT elsewhere in this notice.

2. *Content and Form of Application Submission:* Each LEA or CBO desiring a grant shall submit an application that contains a plan to initiate, expand, or improve physical education programs in order to make progress toward meeting State standards for physical education. Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: February 4, 2004.

Deadline for Transmittal of Applications: March 22, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 19, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Not more than 5 percent of grant funds made available to an LEA or CBO for any fiscal year may be used for administrative expenses.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications:

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Carol M. White Physical Education Program, CFDA number 84.215F, is one of the programs included in the pilot project. If you are an applicant under the Carol M. White Physical Education Program grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs, ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Carol M. White Physical Education Program grant competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*See* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Carol M. White Physical Education Program grant competition at: *http://e-grants.ed.gov.*

V. Application Review Information

In addition to the selection criteria contained in the application package, we consider (1) novice status; and (2) equitable distribution among LEAs and CBOs serving urban and rural areas.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package

and reference these and other requirements in the Applicable Regulations section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* There are reporting requirements under this program, including under section 5505(a) of the ESEA and 34 CFR 75.590 and 75.720. In accordance with section 5505(a) of the ESEA, grantees under this program are required to submit an annual report that: (1) Describes the activities conducted during the preceding year; and (2) demonstrates that progress has been made toward meeting State standards for physical education. In accordance with 34 CFR 75.590, grantees must submit an annual performance report that evaluates:

a. Progress in achieving the objectives in the approved application;

b. The effectiveness of the project in meeting the purposes of the program; and

c. The effect of the project on participants served by the project.

The annual performance report must address these reporting requirements and progress toward meeting the following performance measures established by the Secretary for this program.

In addition, at the end of the project period, a final performance and financial report must be submitted as specified by the Secretary in 34 CFR 75.720.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Carol M. White Physical Education Program:

a. The number and percentage of students served by the grant actively participating in physical education activities will increase; and

b. The number and percentage of students served by the grant who make progress toward meeting State standards for physical education will increase.

These two measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their annual performance reports about progress toward these goals. The Secretary will also use this information to respond to reporting requirements concerning this program established in Section 5421(f) of the ESEA.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Ann Weinheimer or Pat Rattler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E–330, Washington, DC 20202–6450. Telephone: (202) 260–5939 or by e-mail: *Ann.Weinheimer@ed.gov* or *Pat.Rattler@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: January 30, 2004.

William Modzeleski,

Associate Deputy Under Secretary, Office of Safe and Drug-Free Schools.

[FR Doc. 04–2284 Filed 2–3–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students: Overview Information; National Professional Development Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.195N.

DATES: *Applications Available:* February 4, 2004.

Deadline for Notice of Intent to Apply: February 19, 2004.

Deadline for Transmittal of Applications: March 5, 2004.

Deadline for Intergovernmental Review: May 4, 2004.

Eligible Applicants: Institutions of higher education in consortia with State educational agencies or local educational agencies.

Estimated Available Funds: 3,100,000.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the National Professional Development Program is to provide for professional development activities that will improve classroom instruction for limited English proficient (LEP) children and assist educational personnel working with such children to meet high professional standards, including standards for certification and licensure as teachers who work in language instruction education programs or serve LEP children.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2004 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1. Applications that propose to prepare teachers to involve parents and community groups in school improvement.

Invitational Priority 2. Applications that propose professional development that is designed to prepare regular classroom teachers in curricula, instructional strategies, and assessment of LEP students and that is aligned with State academic content standards, academic achievement standards, and English language proficiency standards.

Invitational Priority 3. Applications that propose professional development that is designed to prepare non-instructional staff, such as counselors

and administrators to meet the needs of LEP students.

Invitational Priority 4. Applications that propose to prepare participants with proficiency in a language other than English and high academic achievement to teach in dual language programs, including providing professional development to ensure that participants meet the Highly Qualified Teacher requirements of the No Child Left Behind Act of 2001 (NCLB) and that they are prepared to provide challenging content in languages of instruction.

Invitational Priority 5. Applications that propose to develop or improve teacher preparation curricula and materials for all teachers to better reflect the needs of LEP students, and which may include professional development to improve the knowledge and skills of higher education faculty.

Program Authority: 20 U.S.C. 6861.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: 3,100,000.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education in consortia with State educational agencies or local educational agencies.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Patrice Swann, U.S. Department of Education, 400 Maryland Ave, SW., room 5626, Washington, DC 20202–6510. Telephone: (202) 205–8966, or by e-mail: *patrice.swann@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: If you intend to apply for a grant under this competition, contact Robert Trifiletti: Telephone: (202) 205–5712 or by e-mail: *robert.trifiletti@ed.gov.*

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 35 pages using the following standards.

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one page abstract. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: February 4, 2004.

Deadline for Notice of Intent to Apply: February 19, 2004.

Deadline for Transmittal of Applications: March 5, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements. However, we will consider an application, submitted by the deadline date for submission of applications, even if the applicant did not provide us notice of its intent to apply by the deadline date specified above.

Deadline for Intergovernmental Review: May 4, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submittal of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The National Professional Development Program—CFDA Number 84.195N is one of the programs included in the pilot project. If you are an applicant under the National Professional Development Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Applications System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following theses steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the National Professional Development Program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes between the hours of 8:30 a.m. and 3:30 p.m. Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the National Professional Development Program at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this program are as follows:

(a) *Need for project.* (10 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(b) *Quality of the project design.* (30 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(c) *Quality of project services.* (20 points)

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers one or more of the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(d) *Quality of project personnel.* (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers one or more of the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

(e) *Quality of the management plan.* (10 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(3) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(f) *Quality of the project evaluation.* (20 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers one or more of the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(4) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Performance measures for the National Professional Development Program are:

1. Program improvement related to K–12 state standards, scientifically based research practices, or development of subject area competence.

2. Effectiveness of graduates/completers in the instructional setting.

3. The rate of placement of graduates in an instructional setting serving LEP students, within one year of graduation.

4. The percentage of program completers who are highly qualified teachers as defined in the NCLB's Highly Qualified Teacher Requirements.

Grantees will be expected to report on progress in meeting the performance measures for the National Professional Development Program in their Annual Performance Report and in their Final Performance Report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Samuel Lopez, 400 Maryland Avenue, SW., Switzer Building, room 5605, Washington, DC 20202–6510. Telephone: (202) 401–1427, or by e-mail: *Samuel.Lopez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. OTHER INFORMATION

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 30, 2004.

Maria H. Ferrier,

Deputy Under Secretary and Director for English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. 04–2285 Filed 2–3–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA26

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2004 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve employment-related rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before March 5, 2004.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

These proposed priorities are in concert with NIDRR's Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for each priority presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Research and Training Centers

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the RRTC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of approved grant objectives.

The Secretary is interested in hypothesis-driven research activities. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria.

Priorities

Background

National data indicate that employment rates of individuals with disabilities continue to lag well behind those of individuals without disabilities. Analyses of the National Health Interview Survey, the Survey of Income and Program Participation, and the Current Population Survey provide evidence that substantial differentials in employment exist among all sociodemographic groups and in periods of economic expansion as well as decline. (How Working Age People With Disabilities Fared Over the 1990s Business Cycle. Burkhauser, RV, Daly, MC, and Houtenville, AJ. Cornell University, Ithaca, NY. 2000; Improved Employment Prospects for People With Disabilities. Kaye, HS. Department of Education, Washington, DC. In press, 2003; Employment, Earnings, and Disability. McNeil, JM. Census Bureau, Washington, DC. 2000. *http://www.census.gov/hhes/www/disable/emperndis.pdf*). Even when employed, individuals with disabilities have substantially lower earnings than those without disabilities (McNeil, 2000).

However, some analyses suggest that there has been some progress in closing the employment gap. In expanding industries, the employment gap shrank during the decade of the 1990's. Also, during that time frame, the employment rate increased among the group of individuals with disabilities who consider themselves able to work (Kaye, 2003).

These priorities are designed to encourage studies that address gaps in understanding of the complex issues and factors affecting employment of individuals with disabilities. The focus of this research may be on the numerous factors affecting employment outcomes, facilitators and barriers for workforce participation, and employment policies. The goal of this research is to ultimately provide guidance to employers, policymakers, trainers and educators, and stakeholders to assist them in selecting optimal strategies that promote improved employment outcomes for individuals with disabilities.

Proposed Priorities

The Assistant Secretary proposes to fund RRTCs that will conduct research on improving employment outcomes of individuals with disabilities. Applicants must select one of the following priorities: Economic Research on Employment Policy and Individuals with Disabilities; Employment Service Systems; Workplace Supports and Job Retention; and Substance Abuse and Employment Outcomes.

Under each of these priorities, the RRTC must:

(1) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, individuals with disabilities and their family members, practitioners, service providers, researchers, and policymakers;

(2) Provide technical assistance to critical stakeholders to facilitate utilization of research findings; and

(3) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the RRTC's research activities, for individuals with disabilities, their representatives, service providers, and other interested parties.

In addition to the specific activities proposed by the applicant, each RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle, including research from other sources, and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve persons with disabilities in planning and implementing the RRTC's research, training, and dissemination activities, and in evaluating the research;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with minority backgrounds; and
- Demonstrate how the RRTC project will yield measurable results for individuals with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.
- Consider the effect of demographics factors such as race/ethnicity, and educational level and disability factors such as and disability severity when conducting the research.

Each RRTC must focus research on one of the following priorities:

Priority 1—Economic Research on Employment Policy and Individuals with Disabilities: The purpose of the priority on economic research on employment policy and individuals with disabilities is to improve information on the employment status of individuals with disabilities and the effects of legislative and policy initiatives on employment outcomes for such individuals. The research funded under this priority must be designed to contribute to the following outcomes:

- Improved understanding of employment trends for individuals with disabilities in relation to macroeconomic, legislative, and policy changes;
- Strategies for evaluating legislative and policy efforts to improve employment outcomes for individuals with disabilities; and
- Identification of policies that contribute to improved employment outcomes for individuals with disabilities.

The research resulting from this RRTC's program will provide guidance to policy-makers and others involved in efforts to improve employment outcomes for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

Priority 2—Employment Service Systems: The purpose of the priority on employment service systems is to identify effective strategies that could be used by public and private employment service providers to improve employment outcomes for individuals with disabilities. Among public systems, the RRTC may include State vocational rehabilitation services and services provided under the Workforce Investment Act (WIA). Among private systems, the RRTC may include for-profit and non-profit employment service providers. The RRTC may propose research related to other public and private employment systems. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Community-Based Employment Service Programs and State Service Systems. The research funded under this priority must be designed to contribute to the following outcomes:

- Cost-effective strategies that enhance consumer access to, and satisfaction with, services that improve employment outcomes;
- Effective simplified strategies for eligibility determination that promote access to services and improved customer satisfaction;
- Effective service system strategies for the provision of individualized services, and enhanced coordination of services at the individual level; and

• Effective strategies to improve employment outcomes for individuals with disabilities.

Priority 3—Workplace Supports and Job Retention: The purpose of the priority on workplace supports and job retention is to improve employment outcomes through the use of effective workplace supports and job retention strategies. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Employer Roles and Workplace Supports. The research funded under this priority must be designed to contribute to the following outcomes:

• Improved understanding of the use of workplace supports, accommodations, and strategies across a variety of work settings and with specific disability groups;

• Improved understanding of factors that impede the use of effective workplace supports and job retention strategies; and

• Identification of effective employer-based or workplace strategies or accommodations that improve employment outcomes for individuals with disabilities.

Priority 4—Substance Abuse and Employment Outcomes: The purpose of the priority on substance abuse and employment outcomes is to improve employment outcomes for individuals with disabilities who also have substance abuse problems. The research funded under this priority must be designed to contribute to the following outcomes:

• Effective techniques for individuals and agencies providing employment-related services to individuals with disabilities to screen and identify those who have substance abuse problems; and

• Effective strategies to improve employment outcomes for individuals with disabilities who have substance abuse problems.

When conducting this work, the RRTC must examine strategies that are effective in both community and work settings (including community-based partnerships) and must examine the effects of workplace support and clinical treatment services. The reference to this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits

The potential costs associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RRTC Program have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these proposed priorities and project requirements also will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information to improve options and participation in the community for individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at *www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: January 29, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–2287 Filed 2–3–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

U.S.-Canada Power System Outage Task Force: Interim Report: Causes of the August 14th Blackout in the United States and Canada

AGENCY: Office of Electric Transmission and Distribution, Department of Energy.

ACTION: Notice of availability and opportunity for comment.

SUMMARY: The Department of Energy announces the availability of proposed recommendations that have been submitted to the U.S.-Canada Power System Outage Task Force, and announces the deadline for submission of public comments on those recommendations.

DATES: Comments must be received on or before 5 p.m. eastern standard time, February 11, 2004.

ADDRESSES: The document entitled "Interim Report: Causes of the August 14th Blackout in the United States and Canada," public comments on the Report, and proposed recommendations submitted by the public may be reviewed, and recommendations and comments may be submitted, at *http://www.electricity.doe. gov/news/blackout.cfm?section=news&level2=blackout.* Comments also may be submitted by any of the following means: by e-mail to *blackout.report@hq.doe.gov*; by mail to James W. Glotfelty, Director, Office of Electric Transmission and Distribution, TD–1, Room 6H–050, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or by facsimile to (202) 586–1472. This notice is available on the Web at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David Meyer, Office of Electric Transmission and Distribution, U.S. Department of Energy, TD–1, Room 6H–050, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1411.

SUPPLEMENTARY INFORMATION: On August 14, 2003, large portions of the Midwest and Northeast United States and Ontario, Canada, experienced an electric power blackout. The outage affected an area with an estimated 50 million people and 61,800 megawatts (MW) of

electric load in the states of Ohio, Michigan, Pennsylvania, New York, Vermont, Massachusetts, Connecticut, and New Jersey and the Canadian province of Ontario. The blackout began a few minutes after 4 p.m. eastern daylight time (16:00 e.d.t.), and power was not restored for two days in some parts of the United States. Parts of Ontario suffered rolling blackouts for more than a week before full power was restored.

On August 15, 2003, President Bush and Canadian Prime Minister Jean Chrétien directed that a joint U.S.-Canada Power System Outage Task Force be established to investigate the causes of the blackout and how to reduce the possibility of future outages. Since the Task Force was formed, it has been investigating the causes of the outage and is currently engaged in developing recommendations concerning how to reduce the possibility of future outages and to minimize the scope of any outages that do occur.

In November 2003, the Task Force issued an Interim Report, which is available on the Web at the Internet address identified in the **ADDRESSES** section of this notice. The Interim Report presented the facts that the bi-national investigation had found regarding the causes of the August 14, 2003, blackout.

When it issued the Interim Report, the Task Force requested that the public submit comments on any aspect of the Report. The Task Force also called for interested parties to submit proposed recommendations for the Task Force's consideration. Subsequently, three public meetings were held at which Task Force representatives received public comments and proposed recommendations. Those meetings were held on December 4, 2003, in Cleveland, Ohio, on December 5, 2003, in New York, New York, and on December 8, 2003, in Toronto, Ontario, Canada. Numerous parties also have submitted written comments and recommendations, all of which are available for public inspection at the Internet address identified in the **ADDRESSES** section of this notice.

All persons interested in submitting comments on the Interim Report, proposed recommendations, and/or comments on proposed recommendations, must submit their comments to the Task Force by the date specified in the **DATES** section of this notice; after that date, no further submissions will be entertained. Comments must be submitted to one of the addresses listed in the **ADDRESSES** section of this notice. The Task Force will consider recommendations and comments received by the specified deadline when preparing the Task Force's final report.

Issued in Washington, DC, on January 29, 2004.

James W. Glotfelty,

Director, Office of Electric Transmission and Distribution.

[FR Doc. 04–2229 Filed 2–3–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

On-Board Fuel Processing Go/No-Go Decision

AGENCY: Office of Energy Efficiency and Renewable Energy, Golden Field Office, Department of Energy (DOE).

ACTION: Notice of on-board fuel processing go/no-go decision.

SUMMARY: The Department of Energy (the Department or DOE) today gives notice of the June 30, 2004, decision regarding the future of on-board fuel processing activities within the Hydrogen, Fuel Cells and Infrastructure Technologies Program. A review panel has been assembled by the National Renewable Energy Laboratory (NREL) to review the current state of fuel processing activities against technical criteria. Based on the panel findings, NREL will submit a written recommendation to the Department regarding the technical decision regarding the future of on-board processing activities on or before June 18, 2004. The NREL review panel will meet during the May 24 through June 18 time frame to hear presentations that include data to support the technical decision. Position papers regarding the go/no-go decision will be accepted by DOE for consideration in this decision and will also be forwarded to NREL for consideration as a presentation to the review panel. Position papers are limited to 10 pages maximum.

DATES: Written position papers for consideration by the Department regarding this decision must be received by May 15, 2004. NREL must receive requests to speak before the review panel no later than May 15, 2004. Attendees at the review panel will be limited to the current presenter, the panel and NREL, Argonne National Laboratory and DOE representatives.

ADDRESSES: Written position papers regarding the decision and requests to speak before the review panel are welcomed. Please submit 10 copies of the position paper to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–2H, Attn: Valri Lightner, 1000 Independence Avenue, SW., Washington, DC 20585–0121, e-mail *valri.lightner@ee.doe.gov*. Requests to present before the panel should be sent to: U.S. Department of Energy, National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401–3393, Attn: Dale Gardner or via e-mail to *dale_gardner@nrel.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Valri Lightner, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–2H, Attn: Valri Lightner, 1000 Independence Avenue, SW., Washington, DC 20585–0121, phone: (202) 586–0937, e-mail *valri.lightner@ee.doe.gov* or Mr. Dale Gardner, U.S. Department of Energy, National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401–3393, Attn: Dale Gardner, phone (303) 275–3020, e-mail *dale_gardner@nrel.gov*.

SUPPLEMENTARY INFORMATION: The mission of the Department of Energy's Hydrogen, Fuel Cells and Infrastructure Technologies Program is to research, develop and validate fuel cell and hydrogen production, delivery, and storage technologies such that hydrogen from diverse domestic resources will be used in a clean, safe, reliable and affordable manner in fuel cell vehicles; central station electric power production; distributed thermal electric; and combined heat and power applications. The President's Hydrogen Fuel Initiative accelerates research, development and demonstration of hydrogen production, delivery and storage technologies to support an industry commercialization decision on the hydrogen economy by 2015. The FreedomCAR partnership is on track for an industry commercialization decision on hydrogen fuel cell vehicles by 2015.

The transition to a hydrogen economy will take decades. During this transition, from about 2010 to 2030, technologies that enable the use of the current liquid fuels infrastructure to provide the hydrogen to power fuel cell vehicles will be required. Several options are being considered, such as fuel reforming on-site at fueling stations or fuel reforming on-board the vehicle for transportation applications. The Department has funded research and development (R&D) of on-board vehicle, fuel processing technologies for 10 years. The R&D has focused on the development of a fuel flexible, fuel processor targeting gasoline, ethanol, methanol and natural gas. Based on the

current state of technology development, it is uncertain that on-board fuel processing activities will be on track to meet the ultimate technical criteria to support the transition to a hydrogen economy as shown in Table 1.

TABLE 1.

Attribute	Units	2003 status	2004 demo criteria	Ultimate target
Transient	sec	60	<5, 10% to 90% and 90% to 10%.	<1, 10% to 90% and 90% to 10%
Start-up Time	sec	<600 (+20°C)	<60 to 90% traction power	<2 to 10%, <30 to 90%
Start-up Energy	MJ/50kWe		<2	<2
Efficiency	%	78	78	>80
Power density	W/L	700	700	2,000
Durability	hours	2000	2000 and >50 stop/starts	5,000 and 20,000 starts
Sulfur Tolerance	ppb		<50 out from 30 ppm in	<10 out from 30 ppm in
Turndown, cost	ratio		20:1	>50:1
	$/kWe	65	n/a	<10

Specifically challenging are start-up time/energy and cost. The Department has decided to review the current state of on-board fuel processing and the technology path forward as a "Go/No-Go Decision" whether to continue on-board fuel processing activities in June 2004. The criteria for the review will be to demonstrate that the 2004 demonstration criteria can be met using available technology as demonstrated in experimental hardware. A clear technical path to achieving the ultimate targets is also required. It is desired that a single system be demonstrated that meets all criteria simultaneously; however, if integration with other technologies is needed to simultaneously meet all targets, the technologies must be compatible. For more information about the Hydrogen, Fuel Cells and Infrastructure technologies Program and related fuel processing activities visit the program's Web site at *www.eere.energy.gov/hydrogenandfuelcells.*

Issued in Golden, Colorado, on January 21, 2004.

Mary Hartford,

Acting Director, Office of Acquisition and Financial Assistance.

[FR Doc. 04–2272 Filed 2–3–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–242–000, EL04–50–000, ER04–115–000, EL04–47–000]

Pacific Gas and Electric Company and California Independent System Operator Corporation; Notice of Initiation of Proceeding and Refund Effective Date

January 27, 2004.

Take notice that on January 23, 2004, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL04–50–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL04–50–000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–177 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 28, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12481–000.

c. *Date filed:* December 19, 2003.

d. *Applicant:* AMG Energy, LLC.

e. *Name of Project:* Selden Dam Project.

f. *Location:* On the Black Warrior River, in Greene and Hale Counties, Alabama, utilizing the U.S. Army Corps of Engineers' Selden Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Janis Millett, Esq., AMG Energy, LLC, Lincoln Square, 555 Eleventh Street, NW., Sixth Floor, Washington, DC 20004, (202) 508–3415.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project Number (P–12481–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the Corps existing Selden Dam and would consist of: (1) A proposed powerhouse containing 2 or 3 generating units and having a total installed capacity of 6 megawatts, (2) a proposed 2-mile-long, 14.7 kilovolt transmission line, and (3) appurtenant facilities. Applicant

estimates that the average annual generation would be 40 gigawatt-hours and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–171 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Removal of Lands From the Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to remove project lands from the project boundary.

b. *Project No.:* 1951–119.

c. *Date Filed:* December 16, 2003, supplement filed January 13, 2004.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Sinclair Hydroelectric Project.

f. *Location:* The project is located on the Oconee River in Baldwin, Hancock, and Putnam Counties, Georgia. There are 48 acres of Oconee National Forest lands within the project boundary around Lake Sinclair.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Larry Wall, 241 Ralph McGill Blvd., Atlanta, Georgia 30308–3374, (404) 506–2054.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Shaffer at (202) 502–8944, or e-mail address: *Robert.Shaffer@ferc.gov*.

j. Deadline for filing comments and or motions is March 1, 2004.

k. *Description of Request:* Georgia Power Company (Georgia Power) is seeking Commission authorization to remove 3650 acres of project lands from within the project boundary. Georgia Power would retain the current levels of ownership of the area proposed for removal. The change in project boundary from the 350′ contour to the 343′ contour would exclude many residential structures from the project boundary, and would simplify administrative duties for Georgia Power. Cultural properties, recreation and public access sites, and areas set aside for conservation and future recreation development under the license will

remain within the boundary regardless of the contour.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–172 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2181–014]

Northern States Power Company (d/b/a Xcel Energy); Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 28, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2181–014.

c. *Date filed:* February 10, 2003.

d. *Applicant:* Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project:* Menomonie Hydroelectric Project.

f. *Location:* On the Red Cedar River, in the City of Menomonie, Dunn County, Wisconsin. This project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively.

i. *FERC Contact:* John Ramer, *john.ramer@ferc.gov*, (202) 502–8969.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice, reply comments are due within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filing.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The Menomonie Project consists of the following existing facilities: (1) A 624-foot-long, 40-foot-high dam, topped with five, 40-foot-wide by 19-foot-high and one, 9-foot-high by 25-foot-wide, steel Tainter gates, with a total dam discharge capacity of 62,000 cubic feet per second (cfs); (2) a 1,405-acre reservoir (Lake Menomin) with a gross storage capacity of 15,000-acre feet; (3) a powerhouse containing two vertical-shaft Kaplan turbine-generators with a combined total maximum hydraulic capacity of 2,700 cfs and a total installed generating capacity of about 5.4 megawatts (MW), producing a total of 23,358,292 kilowatt-hours (kWh) annually; and (4) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field (P–2181), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other

pending projects. For assistance, contact FERC Online Support. To view upcoming FERC events, go to *http://www.ferc.gov* and click on "View Entire Calendar".

n. All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate.

Action	Tentative date
Notice of availability of the NEPA document	August 2004.
Ready for Commission decision on the application	November 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E4–173 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2232–458.

c. *Date Filed:* December 5, 2003.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* This proposed use would be located within the Catawba-Wateree Project on Lake Wylie in York County, South Carolina. This project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, Division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina, 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions regarding this notice should be addressed to Ms. Jean Potvin at (202) 502–8928 or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments or motions:* March 1, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–458) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power is requesting Commission approval to relocate 5 boat slips located at the Landing subdivision on Lake Wylie. The purpose of the relocation is to gain greater water depth. These 5 slips are part of an existing 23 slips located at The Landing which were approved by the Commission on March 2, 2001 (*see* 94 FERC ¶ 62,186 (2001)).

l. *Location of the application:* The filings are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit responses in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, that agency will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–174 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2697–014]

Cedar Falls Hydro; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 28, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Major License.

b. *Project No.*: P–2697–014.

c. *Date filed*: February 10, 2003.

d. *Applicant*: Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project*: Cedar Falls Hydroelectric Project.

f. *Location*: On the Red Cedar River, in the Towns of Tainter, Red Cedar, and Sherman, Dunn County, Wisconsin. This project does not occupy federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact*: Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, PO Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively.

i. *FERC Contact*: John Ramer, *John.Ramer@FERC.gov*, (202) 502–8969.

j *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice, reply comments are due within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filing.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The Cedar Falls Project consists of the following existing facilities: (1) A 510-foot-long, 50-foot-high dam, topped with two, 23-foot-wide by 5-foot-high, steel Tainter gates, with a total dam discharge capacity of 57,000 cfs; (2) a 1,752-acre reservoir (Tainter Lake) with a gross storage capacity of 23,000-acre feet; (3) a powerhouse containing three 2,000-kilowatt (kW) horizontal generators with Francis turbines, with a total maximum hydraulic capacity of 2,500 cfs and a total installed generating capacity of 7.1 MW, producing a total of 33,678,351 kWh annually; and (4) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field (P–2697), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. To view upcoming FERC events, go to *www.ferc.gov* and click on "View Entire Calendar".

n. *All filings must*: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedures schedule*: The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Action	Tentative date
Notice of availability of the NEPA document	August 2004.
Ready for Commission decision on the application	November 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E4–175 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 516–388.

c. *Date Filed:* December 10, 2003.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* Lake Murray in Saluda County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Randolph R. Mahan, Manager, Environmental Programs and Special Projects, SCANA Services, Inc., Columbia, SC, 29218, (803) 217–9538.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 1, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–516–388) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* South Carolina Electric & Gas Company is requesting Commission approval to permit Westshore Limited, d/b/a Spinners Marina, to use project lands below the 360-foot contour to accommodate the installation of a floating dock capable of berthing 40 boats at an existing marina. The marina presently consists of only a dock and a boat ramp. The marina is located at Spinners Marina, on Lake Murray, 101 Sandlewood Road, Leesville, Saluda County, South Carolina.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC. 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov.* For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–176 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL04–2–000, EL03–236–000]

Compensation for Generating Units Subject to Local Market Power Mitigation in Bid-Based Markets PJM Interconnection, L.L.C.; Notice of Technical Conferences

January 28, 2004.

As previously announced in a notice issued January 12, 2004, conferences will be held on February 4 and 5, 2004, to discuss issues related to local market power mitigation and the methods of compensating must-run generators in organized markets.[1] The conferences will be held on February 4 and 5 beginning at 9 a.m. The conferences will take place at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commissioners may attend all or part of the conferences.

The conference to be held on February 4, 2004, will focus on broad general principles for pricing of must-run generating units and the general framework the Commission should use to address this issue. The conference to be held on February 5, 2004, will focus on PJM's specific proposal regarding compensation for must-run generating units in Docket No. EL03–236 and how it fits within the broader framework.

The February 4, 2004 technical conference will include perspectives from key industry experts and market participants on local market power mitigation and Reliability Must-Run (RMR) issues. This conference will be structured as three panels with brief presentations and question and answer periods.

The subject areas to be considered at the conferences are given below, along

[1] In an Order issued December 19, 2003, the Commission directed staff to convene a two-part technical conference on compensation of must run generating units. Compensation for Generating Units Subject to Local Market Power Mitigation in Bid-Based Markets, 105 FERC ¶61,312 (2003).

with the agenda and confirmed speakers for the February 4, 2004 conference. A detailed list of questions that may be relevant for any panel or day of the conferences is included as an attachment to this Notice.

Issues to be discussed at each panel:

- Description and extent of local market power concerns
- Interaction between local market power concerns and RMR issues
- How important is additional infrastructure in mitigating local market power?
- What are the appropriate ways to mitigate local market power and also meet reliability needs?
  - Spot market price mitigation
  - Market design changes
  - RMR contracts
  - Infrastructure solutions
- What mix of short-run and long-run solutions should be adopted?
- Prospects for successful implementation of solutions
- Is there a single policy that is applicable to all markets?

Region-specific issues (to be addressed during Afternoon Sessions #1 and #2 on February 4th and on February 5th):

- Effectiveness and success of current local market power mitigation approach
- Current concerns or issues (*e.g.*, price impact, inadequate infrastructure, insufficient generator revenues) about local market power mitigation and possible solutions
- Proposed solutions being considered
- Infrastructure needs within region

Agenda for the February 4, 2004 Conference

Morning Session #1 (9—9:20)

Presentation on capital commitment/investment decision-making Frank Napolitano, Lehman Brothers Inc.

Morning Session #2 (9:30—12:15)

Frank Napolitano, Lehman Brothers Inc.
Michael Schnitzer, The NorthBridge Group, representing Exelon Corp.
Bill Hogan, Harvard University
Roy Shanker, Consultant to generators and financial market participants
David Patton, Potomac Economics, MISO Market Monitor
Joe Bowring, PJM Market Monitor
Roy Thilly, Wisconsin Public Power Inc.
Abram Klein, Edison Mission Marketing & Trading

Afternoon Session #1 (1:30—3)

Mark Reeder, New York Public Service Commission
Steve Wemple, Con Edison Energy
Bob Ethier, ISO–NE Market Monitor
Steve Corneli, NRG Power Marketing Inc
Gunnar Jurgensen, Northeast Utilities/Select Energy
John Anderson, John Hancock

Afternoon Session #2 (3:15—4:45)

Keith Casey, CAISO
Danielle Jassaud, Public Utility Commission of Texas
John Meyer, Reliant Resources, Inc.
Judi Mosley, Pacific Gas & Electric Company

The February 5, 2004 PJM-specific technical conference will focus on the alternative local market power mitigation and RMR proposals and comments that have been filed in the Docket No. EL03–236–000 proceeding. The structure of this conference will be more informal than the general conference. PJM and the participants sponsoring alternative policies will present and discuss their proposals. Opportunity for additional comment will be provided. Issues addressed at the February 4 conference may be discussed at the PJM-specific conference.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's e-Library two weeks after the conference. The Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC".

Questions about the February 4 conference should be directed to: Michael Coleman, Office of Markets, Tariffs, and Rates, 888 First Street, NE., Washington, DC 20426, 202–502–8236, *michael.coleman@ferc.gov.*

Questions about the February 5 PJM conference should be directed to: David Kathan, Office of Markets, Tariffs, and Rates, 888 First Street, NE., Washington, DC 20426, 202–502–6404, *david.kathan@ferc.gov.*

Magalie R. Salas,
Secretary.

Detailed Questions; Technical Conferences; February 4 and 5, 2004

(1) What is local market power and why should it be mitigated? When should a supply offer be mitigated?

(2) What are load pockets and what infrastructure is needed to resolve them?

(3) What are the goals of local market power mitigation, and how do they fit with the goals of attracting and retaining needed infrastructure investment?

(4) When does scarcity occur within a local area or load pocket?

a. What distinguishes between short and long-term scarcity?

b. How does one distinguish between scarcity pricing and monopoly rents?

(5) How is infrastructure developed in load pockets?

(6) What are the options for local market power mitigation?

(a) Bid Offer caps.

a. Unit-specific.

b. Seller-specific.

c. Region-specific.

(b) RMR contracts.

(c) Other.

(7) Which roles are appropriate and preferred for the following entities, and who should be responsible for addressing local market power and infrastructure development?

a. Should RTOs and ISOs:

i. Administer markets that appropriately value resources over time and location?

ii. Administer local market power mitigation measures?

1. What degree of discretion is appropriate?

iii. Develop and enforce capacity obligations?

iv. Negotiate contracts (*e.g.*, RMR contracts) and auctions for resources?

b. Should LSEs.

i. Have the responsibility to procure sufficient resources including in load pockets?

ii. Pay for resources that RTOs and ISOs procure on their behalf?

c. State commissions.

d. FERC.

(8) What approaches produce price signals and market structures that attract investment in load pockets?

a. Relax market power mitigation.

i. Safe harbor bid adders (*e.g.*, PUSH).

b. Local installed capacity obligations (LICAP).

i. Enforcement through capacity deficiency rate.

ii. Enforcement through spot price penalty.

iii. Duration of obligation.

c. Pricing of the value of operating reserves (scarcity pricing).

d. State-approved curtailment plans.

e. Infrastructure related Credit Issues.

(9) For transparent market prices to attract and retain needed investment where and when needed, should these prices reflect:

a. Short run marginal cost.

b. "Going forward" cost.
c. Long run marginal cost.
d. Sunk investment cost.
e. Other.

(10) Are long-term commitments necessary for investment in infrastructure (generation, transmission or demand response) to resolve or remove load pockets?

(11) Under what conditions is an RTO-administered auction to acquire capacity in a local area warranted?

a. Who can call for an auction?

b. What resources will be able to bid into auction? Transmission? Existing generation units? Demand Response?

(12) What are appropriate combinations of the market power mitigation measures and the local resource adequacy measures?

[FR Doc. E4–170 Filed 2–3–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7618–2]

Science Advisory Board Staff Office; Notification of Upcoming Meeting of the US Environmental Protection Agency Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA, Science Advisory Board (SAB) Staff Office announces a public meeting of the Board of the EPA SAB.

DATES: February 23–25, 2004: A public meeting of the Board of the EPA SAB will be held from 9 a.m. to 5 p.m. on February 23 and 24, 2004, and from 9 a.m. to 12 p.m. on February 25, 2004 (eastern time).

ADDRESSES: The meeting location for face-to-face meetings of the Board will be in the greater Washington, DC metropolitan area. The meeting location will be announced on the SAB Web site, *http://www.epa/sab* two weeks before the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the SAB may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4558; or via e-mail at *miller.tom@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that the SAB, will hold a public meeting, also described above, to provide advice to EPA on its science, technology, and research programs and budgets for its Fiscal Year 2005. The first public advisory meeting on this subject was first announced in the **Federal Register** on November 25, 2003 (68 FR 66095), and held on December 10, 2003.

The purpose of the public meeting of February 23–25 is to continue to receive briefings and respond to EPA's charge about science, technology, and research programs and the FY 2005 budget. The charge, meeting agenda, and review documents and background information will be available on the SAB Web site *http://www.epa.gov/sab* two weeks before the meeting.

Individuals who are unable to access the documents electronically may contact Mr. Thomas Miller, DFO, as noted above. A very limited number of paper copies can be made available in special circumstances.

Procedures for Providing Public Comment

It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at the (Board) meeting will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total. Interested parties should contact the DFO in writing (email, fax or mail) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations

Individuals requiring special accommodation to access these meetings, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 23, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–2268 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7618–3]

Science Advisory Board Staff Office; Notification of Upcoming Meetings of the Science Advisory Board Review Panel for the EPA's Report on the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office announces a public teleconference and meeting of the SAB Review Panel for the Agency's Report on the Environment (ROE).

DATES: February 18, 2004: The public teleconference will be held on February 18, 2004, from 11 a.m. to 2 p.m. (eastern time).

March 9–12, 2004: The public meeting of the Panel will be held from 9 a.m. to 5 p.m. on March 9–11, 2004, and from 9 a.m. to 12 p.m. on March 12, 2004 (eastern time).

ADDRESSES: The public meeting of the Panel will be held in the Washington, D.C. metropolitan area. The meeting location will be announced on the SAB Web site, *http://www.epa/sab* two weeks before the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting, or wishing to obtain the teleconference call-in number and access code to participate in the

teleconference, may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202) 564–4539, fax at (202) 501–0582, or via e-mail at *armitage.thomas@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Panel will hold a public teleconference and a public meeting to provide advice to the EPA on the Agency's Report on the Environment. Background on the Panel and the focus of the public teleconference and meeting described in this notice was provided in a **Federal Register** notice published on June 17, 2003 (68 FR 35883–35884).

The purpose of the public teleconference is to discuss the review charge and provide an opportunity for questions or clarifications from the Panel on the ROE prior to the March public meeting. The purpose of the March public meeting is for the Panel to review the ROE. The agendas and charge questions will be posted on the SAB Web site, *http://www.epa.gov/sab/agendas.htm*, prior to the teleconference and meeting. The ROE documents may be found at: *http://www.epa.gov/indicators/roe/html/roePDF.htm*.

Procedures for Providing Public Comments

It is the policy of the EPA SAB to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at the ROE panel meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated). In general, for teleconference meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than 15 minutes total. Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by the DFO no later than noon eastern time five business days prior to the teleconference in order to reserve time on the teleconference agenda. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least seven business days prior to the teleconference date so that the comments may be made available to the committee or panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations

Individuals requiring special accommodation to access the public meetings listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 23, 2004.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–2270 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0360; FRL–7334–4]

Carbamate Cumulative Assessment Group; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 408(b)(2)(D)(v) and (vi) of the Federal Food Drug and Cosmetic Act (FFDCA), as amended by Food Quality Protection Act of 1996 (FQPA), specifies that when determining the safety of a pesticide chemical, EPA shall base its risk assessment on aggregate exposure and available information concerning the cumulative effects to human health that may result from exposure to pesticides and other substances that have a common mechanism of toxicity. EPA has determined that certain substances in the carbamate class of pesticides share a common mechanism of toxicity. This notice announces EPA's determination regarding the specific substances which will be included within this cumulative assessment group (CAG) for the N-methyl carbamate pesticide cumulative risk assessment.

DATES: EPA expects a preliminary cumulative assessment will be available for public comment by the Spring of 2005. EPA will announce its availability and request public comments in a future **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: *Technical issues*: David Miller, Health Effects Division (7509C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5352; e-mail address: *miller.davidj@epa.gov*.

General issues: John Leahy, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6703; e-mail address: *leahy.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0360. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select search, then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. Background

The Food Quality Protection Act (FQPA) of 1996 amended the laws under which EPA evaluates the safety of pesticide residues in food. Section 408(b)(2)(D)(v) and (vi) of the Federal Food Drug and Cosmetic Act, as amended by FQPA, specifies that when determining the safety of a pesticide chemical, EPA shall base its risk assessment on aggregate exposure (i.e., total dietary including water, residential, and other non-occupational) and available information concerning the cumulative effects to human health that may result from dietary, residential, or other non-occupational exposure to pesticides and other substances that have a common mechanism of toxicity. Further, in carrying out the FQPA tolerance reassessment provisions, EPA is instructed to give priority to review of the tolerances or exemptions that appear to pose the greatest risk to public health. (Section 408(q)(2))

Both the organophosphorus and carbamate classes of pesticides have been given high priority by the Office of Pesticide Programs for the reassessment of their tolerances and the completion of cumulative risk assessments in accordance with the mandates of FQPA. A revised cumulative risk assessment for the organophosphorus pesticides has been completed and is available on the EPA website at *http://www.epa.gov/pesticides/cumulative/* (Ref. 7). The carbamate class of pesticides have been given the next highest priority by OPP for the reassessment of tolerances in accordance with the mandates of FQPA, and OPP expects a preliminary cumulative risk assessment for the relevant acetylcholinesterase-inhibiting members of this class to be available to the public by spring of 2005.

A. Determining the Common Mechanism Group

In order to assess the carbamate class for cumulative toxic effects, the Agency needed to first identify as a Common Mechanism Group (CMG) those carbamate pesticides that cause a common toxic effect by a common mechanism. The purpose of this notice is to:

1. Describe the approach, process, and reasoning used by the Agency in identifying, categorizing, and selecting the N-methyl carbamate pesticides which have been designated as a common mechanism group; and

2. Identify the N-methyl carbamate pesticides which OPP expects to be assessed and evaluated in the N-methyl carbamate cumulative risk assessment document.

As the cumulative assessment proceeds, the public and other interested parties will be provided the opportunity to comment and provide input concerning all aspects of the assessment.

As had been done for the organophosphorus pesticides, OPP began its review of the carbamates by commissioning a report by the Risk Sciences Institute (RSI), part of the International Life Sciences Institute (ILSI), which considered whether the carbamate pesticides shared a common mechanism of toxicity. The RSI panel evaluated the potential for two or more carbamate pesticides to act by the same mechanism by applying three principles. The principles were:

- They cause the same critical effect(s)
- They act on the same molecular target at the same target tissue
- They act by the same biochemical mechanism of action perhaps because they share a common toxic intermediate (Ref. 2)

The RSI panel focused on cholinesterase (ChE) inhibition as a scientifically accepted mechanism of action for the carbamates and found that the three principles were met for the ChE-inhibiting carbamates. The panel issued its report, "Common Mechanism of Toxicity: Evaluation of Carbamate Pesticides," to OPP in March 1999 and concluded that the ChE-inhibiting carbamates should be considered to act by a common mechanism of toxicity. RSI also pointed out that some carbamates also produce effects that may not be related to ChE inhibition (Ref. 1).

Subsequent to this ILSI report, OPP prepared its own report on this grouping and presented its analysis in a draft document entitled "A Science Policy on a Common Mechanism of Toxicity: The Carbamate Pesticides And the Grouping of Carbamate with the Organophosphorus Pesticides" to the FIFRA Scientific Advisory Panel (SAP) for review in September 1999 (Ref. 3). This draft document generally concluded that while all of the carbamate pesticides appeared to share a similar chemical structure, they differed in the types of toxic effects they caused and therefore it was appropriate to divide the group into three distinct subgroups: Carbamates, thiocarbamates, and dithiocarbamates. Subcategories of carbamates based on structural characteristics of the carbamate moiety and ChE inhibiting potential are described in this draft document. The report resulting from this September 22, 1999 SAP meeting endorsed OPP's position in that "the Panel agreed unanimously with the Agency's conclusion that acetylcholinesterase provides a sufficient basis for determining a common mechanism of toxicity for grouping carbamate pesticides" (Ref. 4). The SAP, however, also pointed out that other toxic effects (e.g., developmental, thyroid, neurotoxic) should be evaluated as endpoints for grouping the thiocarbamates and dithiocarbamates.

Upon consideration of the ILSI report, the SAP comments, and reviews by OPP, it has been concluded by OPP that the pesticides that comprise the subgroup of N-methyl carbamates, based on their structural characteristics and similarity and their shared ability to inhibit acetylcholinesterase by carbamylation of the serine hydroxyl group located in the active site of the enzyme, should be designated as a Common Mechanism Group. (Ref. 5).

The thiocarbamates and dithiocarbamates are not included in the CMG for cholinesterase-inhibiting carbamates. The thio- and dithiocarbamate subgroups were the subject of a separate FIFRA SAP meeting, September 7, 2001 - Common Mechanism of Action of Thiocarbamates and Dithiocarbamates, in which it was determined that acetylcholinesterase inhibition was not their principal mechanism of toxicity[1] (Ref. 6). As pointed out in the Cumulative Guidance, "refined quantitative estimates should generally focus on common effects that represent the principal toxicities for the CMG" ...so that cumulative risk assessments are efficient and protect public health (Ref. 8). Thus, neither the thiocarbamates nor the dithiocarbamates are included in the cumulative assessment of N-methyl carbamates since they do not share ChE inhibition as a common principal mechanism of toxicity.

B. Determining the Cumulative Assessment Group

Once the constituents of a CMG are identified, a necessary follow-on step in assessing the cumulative risk of a common mechanism group (here, the N-methyl carbamates) involves selecting a subset of these CMG chemicals as a Cumulative Assessment Group (CAG) (see Ref. 8). As described in the Cumulative Guidance (Ref. 8), this subset of CMG chemicals is selected because not all chemicals grouped by common mechanism of toxicity should necessarily be included in a quantitative cumulative risk assessment. For example, initial cumulative assessments should not attempt to quantify risk resulting from chemicals with low hazard potential or from minor exposure scenarios, but should instead focus on those chemicals that are likely to be risk contributors. Specifically (and again as detailed in the cumulative guidance document), the CAG—and consequently the cumulative risk assessment—should exclude those chemicals, those chemical uses, and those exposure scenarios/routes/pathways for which risk and exposure does not contribute in any meaningful or substantive ways to the total cumulative risk picture[2].

OPP began the process of determining the members of the CAG by identifying those carbamates which contained the N-methyl structural moiety. These are listed in the upper rows of Table 1 and identified as such by an X in the second column. Next, OPP further narrowed the list of the potential CAG-candidates by reviewing OPP databases to determine those CMG members that have active food or residential registrations. This information is summarized in columns 3 and 4 of Table 1 which lists those carbamates which have one or more active food/feed or residential registrations, respectively. Those carbamates which have neither food nor residential (non-food) current registrations were eliminated from further consideration for inclusion in the CAG.

Next, OPP investigated the presence, pattern, and magnitudes of residues in the USDA's Pesticide Data Program (PDP) database through 2002. Those carbamates for which PDP has collected data and those for which detectable residues were found in the PDP database through 2002 are listed via an X in the 5th and 6th columns of Table 1. Those chemicals for which PDP did collect residue data but did not detect any residues were eliminated from consideration from the CAG if there were no residential uses. Thus, those chemicals without residential registrations were eliminated for further consideration if an X is present in Column 5 and absent from Column 6. No chemicals were excluded from the CAG as a result of this analysis.

Finally, the 7th column of Table 1 lists those that are currently undergoing phase-out or cancellation. As was done with the OP assessment, chemicals currently undergoing phase-out or cancellation are not included in the CAG since exposures are expected to be zero at some point in the near future.

Based on the above information, N-methyl carbamates which OPP expects to include in the cumulative risk assessment for the carbamate pesticides is as follows: Aldicarb, aldoxycarb, carbaryl, carbofuran, formetanate HCl, methiocarb, methomyl, oxamyl, pirimicarb, propoxur, and thiodicarb.

These carbamates all display ChE-inhibiting activity, have current active registrations, and are expected to contribute to the carbamate cumulative risk assessment through quantitatively meaningful exposure scenarios.

TABLE 1.—SUMMARY OF SELECTION CRITERIA FOR CARBAMATE CAG GROUPING

		Registration		PDP Data		
	N-methyl?	Food Use Registration[a]?	Non-Food Use Registration (e.g., Residential Uses)?	Any PDP Data Available?	Any PDP Detects?	Phase Out or Cancellation?
Aldicarb	X	X		X	X	
Aldoxycarb	X	X		X	X	
Carbaryl	X	X	X	X	X	
Carbofuran	X	X		X	X	

[1]For example, the thiocarbamates and dithiocarbamate pesticides are the sulfur analogs of carbamates, and are not used as insecticides but rather as herbicides or fungicides because these carbamates generally do not appear to be effective cholinesterase inhibitors. Neuropathology is the primary effect of concern for these chemicals.

[2]As stated in the Cumulative Guidance (USEPA 2002), "This focus on likely risk contributors is important ... since a large number of chemicals may increase the complexity and uncertainty with no substantial change in total exposure. Additionally, including a large number of chemicals in the refined quantitation of risk also may confound the interpretation and utility of the assessment results for risk management decisions" (Ref. 8).

TABLE 1.—SUMMARY OF SELECTION CRITERIA FOR CARBAMATE CAG GROUPING—Continued

		Registration		PDP Data		
	N-methyl?	Food Use Registration[a]?	Non-Food Use Registration (e.g., Residential Uses)?	Any PDP Data Available?	Any PDP Detects?	Phase Out or Cancellation?
Formetanate HCl	X	X		X	X	
Methiocarb	X		X	X	X	
Methomyl	X	X		X	X	
Oxamyl	X	X		X	X	
Pirimicarb	X	X		X	X	
Propoxur	X	X	X	X		
Thiodicarb[d]	X	X		X	X	
Aminocarb (Matacil)	X					X
Bendiocarb	X			X		X
Bufencarb (bux)	X					X
Carbosulfan	X					X
Cloethocarb (Lance)	X					X
Dimetilan (Elecron, Famid)	X					X
Ethiofencarb	X			X		X
Isolan (Primin)	X					X
Isoprocarb (Etrofolan, MIPC)	X					X
Mexacarbate (Zectran)	X					X
Promecarb (Carbamult)	X					X
Trimethacarb (Broot, Landrin)	X					X
Asulam		X				
Barban				X		X
Chlorpropham		X		X	X	
Desmidapham		X		X	X	
2-EEEBC[b]						X
Fenoxycarb (torus)		X				
IPBC[c]			X			
Karbutilate		X				
Phenmediphan		X		X	X	
Propamocarb		X				
Propham						X
Thiophanate (methyl)		X	X			
Butylate		X		X		
Cycloate				X		
EPTC				X		

TABLE 1.—SUMMARY OF SELECTION CRITERIA FOR CARBAMATE CAG GROUPING—Continued

		Registration		PDP Data		
	N-methyl?	Food Use Registration[a]?	Non-Food Use Registration (e.g., Residential Uses)?	Any PDP Data Available?	Any PDP Detects?	Phase Out or Cancellation?
Molinate				X		X
Pebulate				X		
Vernolate				X		
Diallate						X
Triallate		X		X		
Thiobencarb		X		X		
Mancozeb		X	X			
Maneb		X	X			
Metiram		X	X			
Zineb						X
Metam Na, K		X	X			
Thiram		X	X			
Ferbam		X	X			
Ziram		X	X			

[a] This includes Food Handling Establishment use for carbaryl and propoxur
[b] 2-2(ethoxyethoxy)ethyl 2-bensimidazole carbamate
[c] 3-iodo-2-propynyl butlcarbamate (aka Trotsan polyphase)
[d] Thiodicarb is a dimer of methomyl and is analyzed as methomyl by the PDP program

Note: The following carbamate pesticides were excluded from the above table since they are not N-methyl carbamates, they do not possess current U.S. registrations for food or non-food uses, there exist no detections in the USDA PDP program, and there is no indication that these have been actively phased out or cancelled: Alanycarb, allyxycarb, benfuracarb, butacarb, butocarboxim, butoxycarboxim, carbanolate, carboxazole, chlorprocarb, decarbofuran, dichlormate, dicresyl, dimetan, dioxacarb, EMPC, fenasulam, fenethacarb fenobucarb furathiocarb, hyquincarb, nitrilacarb, promacyl tazimcarb, terbucarb thiocarboxime, thiofanox, XMC, xylycarb, and NaDMDTC.

D. References

1. International Life Sciences Institute (ILSI). 1999 Common Mechanism of Toxicity: Evaluation of Carbamate Pesticides, International Life Science Institute Report, Washington DC.

2. Mileson, B., JE Chambers, WL Chen, W Dettbarn, M Ehrich, AT Eldefrawi, DW Gaylor, K Hammernik, E Hodgson, AG Karczmar, S Padilla, CN Pope, RJ Richardson, DR Saunders, LP Sheets, LG Sultatos and KB Wallace. Common Mechanism of Toxicity: a case study of organophosphorus pesticides. Toxicological Sciences 41, pp.8–20.

3. USEPA, 1999a. A Science Policy on a Common Mechanism of Toxicity: The Carbamate Pesticides And the Grouping of Carbamate with the Organophosphorus Pesticides; draft document. August 30, 1999. *http://www.epa.gov/scipoly/sap/1999/september/carbam.pdf.*

4. USEPA, 1999b. SAP Report No. 99-05. November 18, 1999.*http://www.epa.gov/scipoly/sap/1999/september/finalrpt.pdf.*

5. USEPA, 2001a. Memorandum from Marcia Mulkey to Lois Rossi. Implementation of the Determinations of a Common Mechanism of Toxicity for N-Methyl Carbamate Pesticides and for Certain Chloroacetanilide Pesticides. July 12, 2001.*http://www.epa.gov/oppfead1/cb/csb_page/updates/carbamate.pdf.*

6. USEPA, 2001b. Memorandum from Paul Lewis to Marcia Mulkey. SAP Report 2001–11. November 1, 2001.*http://www.epa.gov/scipoly/sap/2001/september7/september2001finalsapreport.pdf.*

7. USEPA, 2002a. Organophosphate Pesticides; Availability of the Revised Organophosphate Cumulative Risk Assessment. (67 FR 41993; June 20, 2002)

8. USEPA, 2002b. Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity. January 14, 2002. (67 FR 2210; January 16, 2002)*http://www.epa.gov/pesticides/trac/science/cumulative_guidance.pdf.*

List of Subjects

Environmental protection.

Dated: January 20, 2004.

James Jones,

Director, Office of Pesticides Program.

[FR Doc. 04–2157 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0008; FRL–7341–9]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 68467–EUP–6 from Dow AgroSciences requesting an experimental use permit (EUP) amendment/extension for the *Bacillus thuringiensis* variant Aizawai strain PS811 CryIF; *Bacillus thuringiensis* variant Kurstaki strain HD73 Cry1Ac insecticidal proteins in cotton. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2004–0008, must be received on or before March 5, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons involved in industry, crop production, animal production, food manufacturing, and pesticide manufacturing. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0008. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0008. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0008. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0008.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0008. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Dow AgroSciences has applied to amend/extend EUP 68467–EUP–6 for *Bacillus thuringiensis* variant Aizawai strain PS811 CryIF; *Bacillus thuringiensis* variant Kurstaki strain HD73 Cry1Ac insecticidal proteins in cotton to allow the planting of 4,951 acres of cotton. The Dow AgroSciences program is authorized in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The original notice of approval for this EUP was published in the **Federal Register** on November 19, 2003 (68 FR 65285) (FRL–7329–5).

III. What Action is the Agency Taking?

Following the review of the Dow AgroSciences application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 22, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–2158 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number OECA–2004–0002; FRL–; CWA–HQ–2003–6000; CAA–HQ–2003–6000; EPCRA–HQ–2003–6000; FRL–7618–4]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Nash Finch Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with Nash Finch Company ("Nash Finch" or "Respondent") to resolve violations of the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and the Emergency Planning and Community Right-to-Know Act ("EPCRA") and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and proposed final order, and providing an opportunity for interested persons to comment on the CWA portions of this consent agreement, in accordance with CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

Respondent did not have an Spill Prevention Control and Countermeasure ("SPCC") plan or proper controls in accordance with 40 CFR part 112 at the following facilities: Omaha, NE; Statesboro, GA; Bluefield, VA; Cincinnati, OH; Bridgeport, MI; Fargo, ND; Norfolk, VA; and Baltimore, MD. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations.

Respondent failed to comply with CAA section 112(r), 42 U.S.C. 7412(r), and 40 CFR 68.10 and 68.150 because Respondent has stored an aggregate quantity of more than 10,000 pounds of ammonia (anhydrous) in its refrigeration systems, without having submitted a Risk Management Plan, for Respondent's Lumberton, NC, Cincinnati, OH and Bridgeport, MI facilities. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations.

Respondent failed to comply with EPCRA section 302(c), 42 U.S.C. 11002(c), and the regulations found at 40 CFR Part 355, when they failed to notify the State Emergency Response Committee ("SERC"), and EPCRA section 303(d), 42 U.S.C. 11003(d), and the regulations found at 40 CFR Part 355, when it failed to notify the Local Emergency Planning Committee ("LEPC") of the identity of the emergency coordinator who would participate in the emergency planning process at sixteen (16) facilities, specifically located in Cedar Rapids, IA; St. Cloud, MN; Minot, ND; Fargo, ND; Omaha, NE; Rapid City, SD; Sioux Falls, SD (2 facilities); Bellefontaine, OH; Bridgeport, MI ; Cincinnati, OH; Statesboro, GA; Lumberton, NC; Bluefield, VA; Baltimore, MD; and Norfolk, VA.

In addition, Respondent failed to comply with EPCRA section 311(a), 42 U.S.C. 11021(a) and the regulations found at 40 CFR Part 370, when they failed to submit a Material Safety Data Sheet ("MSDS") for a hazardous chemical(s) or, in the alternative, a list of such chemicals, and EPCRA section 312(a), 42 U.S.C. 11022(a) and the regulations found at 40 CFR Part 370, by failing to prepare and submit emergency and chemical inventory forms to the LEPC, the SERC and the fire department with jurisdiction over each facility, for the following seventeen (17) facilities: Cedar Rapids, IA; St. Cloud, MN; Minot, ND; Fargo, ND; Omaha, NE; Rapid City, SD (2 facilities); Sioux Falls, SD (2 facilities); Bellefontaine, OH; Bridgeport, MI; Cincinnati, OH; Statesboro, GA; Lumberton, NC; Bluefield, VA; Baltimore, MD; and Norfolk, VA. The Agency has assessed a civil penalty under EPCRA section 325 for the violations of EPCRA section 311(a), 42 U.S.C. 11021(a) and EPCRA section 312(a), 42 U.S.C. 11022(a).

DATES: Comments are due on or before March 5, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/ courier. Follow the detailed instructions as provided in Section I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Philip L. Milton, Special Litigation and Projects Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–5029; fax: (202) 564–0010; e-mail: *milton.philip@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information ?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OECA–2004–0002. The official public docket consists of the Consent Agreement, proposed Final Order, and any public comments received. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket Information Center (ECDIC) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1752. A reasonable fee may be charged by EPA for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the Federal Register listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

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For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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B. How and to Whom Do I Submit Comments?

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delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OECA–2004–0002. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *docket.oeca@epa.gov,* Attention Docket ID No. OECA–2004–0002. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 Attention Docket ID No. OECA–2004–0002.

3. *By Hand Delivery or Courier.* Deliver your comments to the address provided in Section I.A.1., Attention Docket ID No. OECA–2004–0002. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Nash Finch is a food retail and distribution company, incorporated in the State of Delaware, with its headquarters office located at 7600 France Avenue South, Minneapolis, MN. Nash Finch disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), that it failed to have an SPCC plan for its facilities located in Omaha, NE; Statesboro, GA; Bluefield, VA; Cincinnati, OH; Bridgeport, MI; Fargo, ND; Norfolk, VA; and Baltimore, MD; in violation of the CWA section 311(b)(3) and 40 CFR part 112. Nash Finch disclosed that it failed to comply with CAA section 112(r), 42 U.S.C. 7412(r), and 40 CFR 68.10 and 68.150 because it had stored an aggregate quantity of more than 10,000 pounds of ammonia (anhydrous) in its refrigeration systems, without having submitted a Risk Management Plan, for its Lumberton, NC, Cincinnati, OH and Bridgeport, MI facilities.

In addition, Nash Finch disclosed that it had failed to comply with EPCRA section 302(c), 42 U.S.C. 11002(c), and the regulations found at 40 CFR part 355, when they failed to notify the SERC, and EPCRA section 303(d), 42 U.S.C. 11003(d), and the regulations found at 40 CFR part 355, when they failed to notify the LEPC of the identity of the emergency coordinator who would participate in the emergency planning process at sixteen (16) facilities, specifically located in Cedar Rapids, IA; St. Cloud, MN; Minot, ND; Fargo, ND; Omaha, NE; Rapid City, SD; Sioux Falls, SD (2 facilities); Bellefontaine, OH; Bridgeport, MI; Cincinnati, OH; Statesboro, GA; Lumberton, NC; Bluefield, VA; Baltimore, MD and Norfolk, VA.

Also, Respondent disclosed that it had failed to comply with EPCRA section 311(a), 42 U.S.C. 11021(a) and the regulations found at 40 CFR part 370, when they failed to submit an MSDS for a hazardous chemical(s) or, in the alternative, a list of such chemicals, and EPCRA section 312(a), 42 U.S.C. 11022(a) and the regulations found at 40 CFR part 370, by failing to prepare and submit emergency and chemical inventory forms to the LEPC, the SERC and the fire department. Also, Respondent disclosed that it failed to comply with EPCRA section 312(a), 42 U.S.C. 11022(a) and the regulations found at 40 CFR part 370, by failing to prepare and submit emergency and chemical inventory forms for the following chemicals: sulfuric acid, diesel fuel, propane, ammonia, and carbon dioxide, to the LEPC, the SERC and the fire department with jurisdiction over each facility, for the following seventeen (17) facilities: Cedar Rapids, IA; St. Cloud, MN; Minot, ND; Fargo, ND; Omaha, NE; Rapid City, SD (2 facilities); Sioux Falls, SD (2 facilities); Bellefontaine, OH;

Bridgeport, MI; Cincinnati, OH; Statesboro, GA; Lumberton, NC; Bluefield, VA; Baltimore, MD; and Norfolk, VA.

Pursuant to 40 CFR 22.45(b)(2)(iii), the following is a list of facilities at which Nash Finch self-disclosed violations of CWA section 311: Omaha, NE; Statesboro, GA; Bluefield, VA; Cincinnati, OH; Bridgeport, MI; Fargo, ND; Norfolk, VA, and Baltimore, MD.

EPA determined that Nash Finch met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA proposes to waive the gravity based penalty ($864,409) and proposes a settlement penalty amount of seventy-one thousand, one hundred and twenty-seven dollars ($71,127). This is the amount of the economic benefit gained by Nash Finch, attributable to their delayed compliance with the CWA, CAA, and EPCRA regulations. Nash Finch has agreed to pay this amount. EPA and Nash Finch negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on January 20, 2004 (*In Re: Nash Finch Company,* Docket Nos. CWA–HQ–2003–6000, CAA–HQ–2003–6000, EPCRA–HQ–2003–6000). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable requirement of the CAA, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of EPCRA. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is March 5, 2004. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: January 29, 2004.

Robert A. Kaplan,

Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–2269 Filed 2–3–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in Florida

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support in the portions of its licensed service area in Florida served by non-rural incumbent local exchange carriers.

DATES: Comments are due on or before February 17, 2004. Reply comments are due on or before March 1, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice, CC Docket No. 96–45, DA 04–26, released January 8, 2004. On October 10, 2003, Sprint on behalf of its Wireless Division filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC in the portions of its licensed service area in Florida served by non-rural incumbent local exchange carriers. Sprint contends that: the Florida Public Service Commission (Florida Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

We note that Sprint must provide a copy of its petition to the Florida Commission. The Commission will also send a copy of this Public Notice to the Florida Commission by overnight express mail to ensure that the Florida Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before February 17, 2004, and reply comments are due on or before March 1, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters

must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Sharon Webber,

Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 04–2242 Filed 2–3–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

CORRECTION: The open meeting for February 5, 2004, will begin at 10 a.m.

DATE AND TIME: Thursday, February 5, 2004, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Robert W. Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–2537 Filed 2–2–04; 3:03 pm]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

[Notice 2004–4]

Filing Dates for the South Dakota Special Congressional Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: South Dakota has scheduled a special general election on June 1, 2004, to fill the At-Large seat in the U.S. House of Representatives vacated by Representative William J. Janklow.

Committees participating in the South Dakota Special General Election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; telephone: (202) 694–1100; toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the South Dakota Special General Election shall file a 12-day Pre-General Report on May 20, 2004; and a 30-day Post-General Report on July 1, 2004. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2004 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the South Dakota Special General Election by the close of books for the applicable report(s). (*See* chart below for the closing date for each report).

Committees filing monthly that support candidates in the South Dakota Special General Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified federal candidate and are distributed within 60 days prior to a special general election. 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than $10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. *See* 11 CFR 104.20.

The 60-day electioneering communications period in connection with the South Dakota Special General runs from April 2, 2004, through June 1, 2004.

CALENDAR OF REPORTING DATES FOR SOUTH DAKOTA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
COMMITTEES INVOLVED IN THE SPECIAL GENERAL (06/01/04) MUST FILE			
Pre-General	05/12/04	05/17/04	05/20/04
Post-General	06/21/04	07/01/04	07/01/04

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Pre- and Post-General Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date. Committees should keep the mailing receipt with its postmark as proof of filing.

Dated: January 28, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–2208 Filed 2–3–04; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010979–039.

Title: Caribbean Shipowners Association.

Parties: Bernuth Lines, Ltd.; CMA CGM, S.A.; Crowley Liner Services, Inc.; Interline Connection, N.V.; Lykes Lines Limited; Seaboard Marine Ltd.; Seafreight Line, Ltd.; Sea Star Line, LLC; TMM Lines, LLC; Tropical Shipping and Construction Co., Ltd.; and Zim-American Israeli Shipping Co., Inc.

Synopsis: The amendment removes A.P. Moller Maersk as a party to the agreement and realigns several parties' participation in the geographical sections of the agreement.

Agreement No.: 011528–024.

Title: Japan/United States Eastbound Freight Conference.

Parties: A.P. Moller-Maersk Sealand; American President Lines, Ltd.; Hapag-Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; and Wallenius Wilhelmsen Lines AS.

Synopsis: The amendment extends the suspension of the agreement through July 31, 2004.

Agreement No.: 011830–002.

Title: Indamex/APL Agreement.

Parties: Contship Containerlines; CMA CGM, S.A.; The Shipping Corporation of India Ltd.; APL Co. Pte Ltd.; and American President Lines, Ltd.

Synopsis: The proposed agreement modification reflects the redeployment of tonnage to be used under the agreement.

Agreement No.: 011852–003.

Title: Maritime Security Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE Ltd.; APM Terminals North America, Inc.; CMA–CGM (America) Inc.; COSCO Container Lines Company, Ltd.; Evergreen Marine Corporation; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha Ltd.; A.P. Moller Maersk Sealand; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Yang Ming Transport Corp.; Zim Israel Navigation Co., Ltd.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority; Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc. TraPac Terminals; Universal Maritime Service Corp.; and Virginia International Terminals.

Synopsis: The amendment adds APM Terminals North America, Inc. as party to the agreement.

Dated: January 30, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–2295 Filed 2–3–04; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 9 a.m.–5 p.m. February 18, 2004. 8:30 a.m.–3 p.m. February 19, 2004.

Place: Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC.

Status: Open.

Background: The National Committee on Vital and Health Statistics is the statutory public advisory body to the Secretary of Health and Human Services in the areas of health data, statistics, and health information policy. Established by section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), its mandate includes advising the Secretary on the implementation of the Administrative Simplification provisions (Social Security Act, title XI, part C, 42 U.S.C. section 1320d to 1320d–8) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191.

The NCVHS Subcommittee on Privacy and Confidentiality monitors developments in health information privacy and confidentiality on behalf of the full Committee and makes recommendations to the full Committee so that it can advise the Secretary on implementation of the health information privacy provisions of HIPAA.

Purpose: This meeting of the Subcommittee on Privacy and Confidentiality will receive information on the implementation of the regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996.

The regulation and further information about it can be found on the Web site of the Office for Civil Rights, at *http://www.hhs.gov/ocr/hipaa/*. The regulation has been in effect since April 14, 2001. Most entities covered by the regulation were required to come into compliance by April 14, 2003.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather information about the impact of the regulation on banking and on law enforcement. The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The format will include one or more invited panels and time for questions and discussion. The Subcommittee will ask the invited witnesses for examples of the effect the regulation has had on individuals and on entities subject to the regulation. The first day will also include a time period during which members of the public may deliver brief (3 minutes of less) oral public comment about the implementation of the regulation. To be included on the agenda, please contact Marietta Squire, (301) 458–4524, by e-mail at *mrawlinson@cdc.gov* or postal address at 3311 Toledo Road, Room 2340, Hyattsville, MD 20782 by February 12, 2004.

The second day of the meeting will be conducted in two parts. The first part will be a hearing in which the Subcommittee will gather information about the effects of the regulation on schools. The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The second part will consist of Subcommittee discussion of the testimony it has heard and deliberations about possible recommendations to the Secretary.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the days of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provide on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shortly before the hearing date.

Contact person for more information: Information about the content of the hearing and matters to be considered may be obtained from Kathleen H. Fyffe, Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 440D Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 690–7152, e-mail *Kathleen.Fyffe@hhs.gov* or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 2413, Presidential Building IV, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov.*

Dated: January 28, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, OASPE.

[FR Doc. 04–2280 Filed 2–3–04; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–26]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Development of an Assistive Technology and Environmental Assessment Instrument for National Surveys—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). Recent federal policy initiatives have targeted the removal of environmental barriers and increased access to assistive and universally designed technologies in order to increase participation in major life activities by persons of all ages with disabilities. Yet, few statistics are available to quantify the potential demand for assistive technologies and no criteria exist to evaluate the potential impact of broadened access.

CDC is seeking OMB approval to cognitively test and pilot a survey instrument that collects information on disabled persons' access to, and use of, assistive technologies and environmental modifications that can be implemented in national health surveys. This information will help policy makers and scientists understand the interface among disability, assistive devices, and environmental modifications. Through a cooperative agreement with the National Institute on Aging, the Office of the Assistant Secretary for Planning and Evaluation has funded researchers at the Polisher Research Institute and Johns Hopkins University to develop the new measures to be tested. The testing will be conducted by the National Center for Health Statistics with funding from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

Approximately 300 interviews will be conducted with adults with disabilities living in the community. These interviews will be 45 minutes in length. To the extent possible, different modes of administration will be utilized (*e.g.* in-person, telephone, or mixed) and racially diverse samples of persons with disabilities in both rural and urban settings will be selected to maximize the sensitivity of the instrument across diverse populations. There is no cost to the respondents other than their time.

Respondents	Number of respondents	Number of responses per respondents	Average burden per response (in hrs.)	Total burden (in hrs.)
Adult with Disabilities	300	1	45/60	225
Total				225

Dated: January 27, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2248 Filed 2–3–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Career Survey of Biomedical Researchers Receiving Loan Repayment Benefits

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Loan of Loan Repayment and Scholarship (OLRS), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the Federal Register on July 17, 2002, pages 46994–46995, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995 unless it displays a currently valid OMB control number.

Proposed Collection

Title: Career Survey of Biomedical Researchers.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: This survey is part of a comprehensive evaluation of the National Institutes of Health (NIH) Loan Repayment Program (LRP), the purpose of which is to evaluate the success of the LRP in raising the probability that a qualified scientist will stay in the intramural research program and pursue a long-term career as a biomedical researcher. The survey will document the actual career outcomes of current and former LRP participants and comparable non-participants. Such information will be used to gauge whether the program is meeting the expectations of program managers and how the program could be improved in the future. It will be used to address the outcome and impact study questions related to short and long-term retention, both at NIH and in research generally.

In addition to informing OLRS about the effectiveness of the program, the results of the LRP evaluation will become the basis for recommendations on how the program could be modified to improve outcomes. Indeed, some of the findings may be useful to the Office of the Director in terms of human resources policy and NIH policy generally. Also, the information collection will help our nation's leaders in setting policies to ensure a solid infrastructure for biomedical research. Encouraging the nation's brightest minds to pursue careers in biomedical research, both in public service such as NIH and in private laboratories, is critical to this effort.

Frequency of Responses: One time data collection.

Affected Public: Individuals.

Type of Respondents: Current and former NIH biomedical researchers. The annualized cost to respondents is estimated at $11,110. There are no Capital Costs, and/or Maintenance Costs to report. The annual reporting burden is as follows:

Type of respondent	Number of respondents	Response per respondent	Hours per response	Total burden hours
LRP Program Participant	300	1	.33	99
Comparison Group	450	1	.33	149
Total	750	1	.33	248

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, shall be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Marc S. Horowitz, J.D., Office of Loan Repayment and Scholarship, National Institutes of Health, 6011 Executive Boulevard, Room 206, Bethesda, Maryland, 20892 or call non-toll-free number 301–402–5666 or e-mail your request, including your address, to *lrp@nih.gov* or access the Loan Repayment Programs on the Internet at *http://www.lrp.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 28, 2004.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 04–2212 Filed 2–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis, Panel, NIBIB Conference Grants.

Date: February 23, 2004.

Time: 2 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, 301–496–8633, *atreyap@csr.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, NIBIB Career and Training Grant Review.

Date: February 24, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, 301–496–8633, *dunnbo@mail.nih.gov.*

Dated: January 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–2364 Filed 2–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, the Role of Air Pollutants in Cardiovascular Disease.

Date: March 4–5, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–2365 Filed 2–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grants (R13s).

Date: March 16, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709 (Telephone conference call).

Contact Person: RoseAnne McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919–541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–2366 Filed 2–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special

Emphasis Panel, Review of Conference Grants (R13s).

Date: March 16, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, EC 122, Research Triangle Park, NC 27709 (Telephone conference call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919–541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–2367 Filed 2–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grants (R13a).

Date: March 16, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, EC 122, Research Triangle Park, NC 27709 (Telephone conference call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919–541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 92.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–2368 Filed 2–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To be certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783,

(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200 / 800–735–5416
DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories *, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500
Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc. *, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center St., Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891 x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176, x276

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901–474–6026

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–2249 Filed 2–3–04; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16327]

Information Collections Under Review by the Office of Management and Budget (OMB): 1625–0074, 1625–0041, 1625–0064, 1625–0049, and 1625–0007

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded five information collection reports (ICRs) to the Office of Information and Regulatory Affairs (OIRA) of the OMB for review and comment. These ICRs are: (1) 1625–0074, Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; (2) 1625–0041, International Oil Pollution Prevention Certificate; (3) 1625–0064, Plan Approval and Records for Subdivision and Stability Regulations — Title 46 CFR Subchapter S; (4) 1625–0049, Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG); and (5) 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 5, 2004.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2003–16327] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and

(b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

(b) OIRA does not have a website on which you can post your comments.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG–2003–16327 Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant at CG–611, U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice Parker-Jones, Office of Information Management, 202–267–2326, for questions on this document; Ms. Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's "Privacy Act" below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–16327], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may attempt to adjust paperwork burdens to be more commensurate with our performance of duties in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published the 60-day notice (68 FR 61456, October 28, 2003) required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICRS addressed. Comments to DMS must contain the docket number of this request, USCG–2003–16327. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB Control Number: 1625–0074.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners of vessels.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: The Omnibus Reconciliation Act of 1990, which amended 46 U.S.C. 2110, requires the Coast Guard to collect user fees from inspected vessels. The information collected allows Coast Guard to properly collect and manage the fees.

Burden: The estimated burden is 3,167 hours a year.

2. *Title:* International Oil Pollution Prevention Certificate.

OMB Control Number: 1625–0041.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and Operators of Vessels.

Forms: CG–5352, CG–5352A and CG–5352B.

Abstract: The information collected aids in the prevention of pollution from ships. An International Oil Pollution Prevention Certificate and other records serve to verify vessels' compliance with certain international and domestic rules on shipping.

Burden: The estimated burden is 6,616 hours a year.

3. *Title:* Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR Subchapter S.

OMB Control Number: 1625–0064.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners, operators and masters of vessels.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: This collection of information requires owners, operators, or masters of certain inspected vessels to obtain and/or post various documents as part of the Coast Guard commercial vessel safety program.

Burden: The estimated burden is 6,474 hours a year.

4. *Title:* Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG).

OMB Control Number: 1625–0049.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of waterfront facilities that transfer LNG or LHG.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: Liquefied Natural Gas and other Liquefied Hazardous Gases present a risk to the public when handled at waterfront facilities. These requirements are intended to prevent or mitigate the result of accidental releases at waterfront facilities. The requirements are necessary to promote and verify compliance with safety standards.

Burden: The estimated burden is 3,540 hours a year.

5. *Title:* Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB Control Number: 1625–0007.

Type of Request: Extension of a currently approved collection.

Affected Public: Manufacturers of Chemicals

Form: CG–4355.

Abstract: Chemical manufacturers submit chemical data to the Coast Guard. The Coast Guard evaluates the information for hazardous properties of the chemical to be shipped via tank vessels. A determination is made as to the kind and degree of precaution needed to protect the vessel and its contents.

Burden: The estimated burden is 108 hours a year.

Dated: January 28, 2004.

Nathaniel S. Heiner,

Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 04–2220 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–16978]

Workshop on Strategies To Increase Personal Flotation Device (PFD) Wear in Recreational Boating at the Miami International Boat Show

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Coast Guard and the Personal Flotation Device Manufacturers Association (PFDMA) are sponsoring a workshop to bring representatives of all appropriate segments of the recreational marine community together to explore any and all means of increasing PFD wear while boating. The workshop will be open to the public.

DATES: The workshop will meet on Friday, February 13, 2004, from 3 p.m. to 5 p.m. The workshop may close early if all business is finished.

ADDRESSES: The workshop will meet in room A201 (in the A Lobby), Miami Beach Convention Center, 1901 Convention Center Dr., Miami Beach, FL. This notice is available on the Internet at *http://dms.dot.gov* and at *http://uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Richard Kanehl, Project Manager, Office of Boating Safety, U.S. Coast Guard, telephone 202–267–0976, fax 202–267–

4285 or Bernice McArdle, Executive Director, Personal Flotation Device Manufacturers Association, telephone 312–946–6200, fax 312–946–0388. If you have questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Commandant of the U.S. Coast Guard is responsible for carrying out the National Recreational Boating Safety Program. A review of the 2002 Coast Guard Boating Safety statistics shows that the 5,705 boating accidents resulted in 750 fatalities and 4,062 injuries. The 750 fatalities reverse a downward trend and are at their highest level since 1998. Seventy percent of the 750 fatalities were drowning victims (524 out of 750); and nearly 85% of the victims who drowned were not wearing their PFD. Additionally, of the 524 fatalities due to drowning, 254 were on vessels known to be less than 16 feet in length and 388 were on vessels known to be less than 21 feet in length. (Note: 68 more drowning fatalities were on vessels of unspecified length.) For the past five years, we have utilized an independent contractor to perform observational surveys of PFD wear at over 120 sites nationwide during the primary boating season. Unfortunately, the results of these surveys indicate that the vast majority of adults do not wear their PFDs while boating. Therefore, we are sponsoring a workshop to bring representatives of all appropriate segments of the recreational marine community together to explore any and all means of increasing PFD wear while boating.

The workshop will be in a panel format. The panelists were selected based on area of marine community involvement, and will address relevant issues regarding PFD wear, as well as issues and questions raised by attendees at the workshop. We plan to prepare minutes of the workshop discussions and distribute them to everyone who registers attendance at the workshop by signing the attendance list at the workshop. You may also obtain a copy of the minutes from the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Agenda of Workshop

The agenda includes the following:

(1) Introduction of the panel members and others.

(2) Discussion of prepared issues including breakdown of PFD wear segment, percentage of PFD wear among groups, attitudes of anglers/hunters, PFD wear studies, challenges, opportunities, actions taken to improve wear rates, update on PFD design, wearability, performance characteristics, comfort, etc.

(3) Discussion of issues and questions raised by attendees at the workshop.

(4) Conclusion.

Procedural

The meeting is open to the public. Please note that the workshop may close early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the persons listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: January 27, 2004.

Kenneth A. Ward,

Captain, U.S. Coast Guard, Acting, Director of Operations Policy.

[FR Doc. 04–2217 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–16980]

Workshop on Propeller-Injury Risk Avoidance Issues in Recreational Boating at the Miami International Boat Show

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Coast Guard and the American Boat and Yacht Council (ABYC) are sponsoring a workshop to discuss various issues to improve recreational boating safety relating to propeller injuries and measures to avoid them. The workshop will be open to the public.

DATES: The workshop will meet on Friday, February 13, 2004, from 1:30 p.m. to 2:30 p.m. The workshop may close early if all business is finished.

ADDRESSES: The workshop will meet in room A201 (in the A Lobby), Miami Beach Convention Center, 1901 Convention Center Dr., Miami Beach, FL. This notice is available on the Internet at *http://dms.dot.gov* and at *http://uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Richard Blackman, Project Manager, Office of Boating Safety, U.S. Coast Guard, telephone 202–267–6810, fax 202–267–4285 or Caroline Chetelat, Marketing & Communications Manager, American Boat and Yacht Council, telephone 410–956–1050, fax 410–956–2737. If you have questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Commandant of the U.S. Coast Guard is responsible for carrying out the National Recreational Boating Safety Program. Recreational boaters are at risk in recreational boats as a result of incidents causing impact with propellers, lower units and appendages. The Coast Guard is engaged with industry, other government organizations, and the public to raise the level of public awareness regarding this safety risk, encourage technological advancement to lower the level of risk, and consider possible appropriate regulatory action. Although significant progress has been made, the Coast Guard intends to continue its efforts to foster active efforts to eliminate propeller related injury as a significant risk to the boating public.

Based on feedback from prior meetings with marine industry representatives, the workshop will be in a panel format. The panelists were selected based on area of marine industry involvement, and will address relevant new technological developments and provide progress updates on a variety of ongoing efforts, as well as issues and questions raised by attendees at the workshop. We plan to prepare minutes of the workshop discussions and distribute them to everyone who registers attendance at the workshop by signing the attendance list at the workshop. You may also obtain a copy of the minutes from the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Agenda of Workshop

The agenda includes the following:

(1) Introduction of the panel members and others.

(2) Discussion of prepared issues and questions based on early input from the marine industry.

(3) Discussion of issues and questions raised by attendees at the workshop.

(4) Conclusion.

Procedural

The meeting is open to the public. Please note that the workshop may close early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities

or to request special assistance at the meeting, contact the persons listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: January 27, 2004.

Kenneth A. Ward,

Captain, U. S. Coast Guard, Acting, Director of Operations Policy.

[FR Doc. 04–2218 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–16979]

Workshop on Carbon Monoxide Risk and Avoidance Issues in Recreational Boating at the Miami International Boat Show

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Coast Guard and the American Boat and Yacht Council (ABYC) are sponsoring a workshop to discuss various issues to improve recreational boating safety relating to carbon monoxide (CO) poisoning and measures to avoid it. The workshop will be open to the public.

DATES: The workshop will meet on Friday, February 13, 2004, from 10 a.m. to 11:45 a.m. The workshop may close early if all business is finished.

ADDRESSES: The workshop will meet in room A201 (in the A Lobby), Miami Beach Convention Center, 1901 Convention Center Dr., Miami Beach, FL. This notice is available on the Internet at *http://dms.dot.gov* and at *http://uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Richard Blackman, Project Manager, Office of Boating Safety, U.S. Coast Guard telephone 202–267–6810, fax 202–267–4285 or Caroline Chetelat, Marketing & Communications Manager, American Boat and Yacht Council, telephone 410–956–1050, fax 410–956–2737. If you have questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Commandant of the U.S. Coast Guard is responsible for carrying out the National Recreational Boating Safety Program. Recreational boaters are at risk in recreational boats as a result of carbon monoxide hazards. The Coast Guard is engaged with industry, other government organizations, and the public to raise the level of public awareness regarding this preventable safety risk, encourage technological advancement to lower the level of risk, and consider possible appropriate regulatory action. Although significant progress has been made, the Coast Guard intends to continue its efforts to foster active efforts to eliminate the risk of carbon monoxide poisoning as a significant risk to the boating public.

Based on feedback from prior meetings with marine industry representatives, the workshop will be in a panel format. The panelists were selected based on area of marine industry involvement, and will address relevant new technological developments and provide progress updates on a variety of ongoing efforts, as well as issues and questions raised by attendees at the workshop. We plan to prepare minutes of the workshop discussions and distribute them to everyone who registers attendance at the workshop by signing the attendance list at the workshop. You may also obtain a copy of the minutes from the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Agenda of Workshop

The agenda includes the following:

(1) Introduction of the panel members and others.

(2) Discussion of prepared issues and questions based on early input from the marine industry.

(3) Discussion of issues and questions raised by attendees at the workshop.

(4) Conclusion.

Procedural

The meeting is open to the public. Please note that the workshop may close early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the persons listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: January 27, 2004.

Kenneth A. Ward,

Captain, U. S. Coast Guard, Acting, Director of Operations Policy.

[FR Doc. 04–2219 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): Applications To Establish Truck Carrier Accounts for Participation in a National Customs Automation Program (NCAP) Test

AGENCY: Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces that the Bureau of Customs and Border Protection (CBP) is accepting applications to establish Truck Carrier Accounts for a National Customs Automation Program (NCAP) test for the Automated Commercial Environment (ACE). Truck carriers who open Truck Carrier Accounts will eventually have the ability to file truck manifest information electronically via the ACE Secure Data Portal and/or via electronic data interchange (EDI) messaging. These Truck Carrier Account-holders will also have access to operational data, receive status messages on ACE Accounts, have access to integrated Account data from multiple system sources, manage and disseminate information in an efficient and secure manner, and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

This notice sets forth eligibility and application requirements for truck carriers to establish ACE Accounts, and opens the application period for submitting applications.

Any truck carriers interested in participating in testing of electronic truck manifest functionality will be required to have a Truck Carrier Account and, therefore, are encouraged to apply to establish an ACE Account. Further information on participating in testing of the automated electronic truck manifest functionality will be the subject of a subsequent **Federal Register** notice.

DATES: Applications to establish ACE Truck Carrier Accounts will be accepted starting on February 4, 2004 and will remain open until further notice. Further information on participation in testing of the automated electronic truck manifest functionality will be set forth in a subsequent **Federal Register** notice.

ADDRESSES: Applications to establish ACE Truck Carrier Accounts should be submitted to Mr. Thomas Fitzpatrick via e-mail at *Thomas.Fitzpatrick@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding the submission of applications to establish ACE truck carrier Accounts: Mr. Thomas Fitzpatrick, via e-mail at *Thomas.Fitzpatrick@dhs.gov*, or by telephone at (202) 927–0543.

SUPPLEMENTARY INFORMATION:

Background

The Customs and Border Protection Modernization Program has been created to improve efficiency, increase effectiveness, and reduce costs for the Bureau of Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends heavily on successfully modernizing CBP business functions and the information technology that supports those functions.

The initial thrust of the Customs and Border Protection Modernization Program focuses on trade compliance and the development of ACE. Development of ACE will consist of many releases. Each release, while individually achieving critical business needs, also will set forth the foundation for the subsequent releases. This component, part of the third ACE release (*see also* 67 FR 21800 (May 1, 2002) and 67 FR 41572 (June 18, 2002)), involves establishing ACE Accounts and giving truck carriers who plan to participate in automated electronic truck manifest testing access to the ACE Secure Data Portal (hereinafter, "ACE Portal").

Truck carriers who establish Truck Carrier Accounts will be the first truck carriers to transmit electronic manifest information in ACE in accordance with section 343 of the Trade Act of 2002 (*see* 68 FR 68140, December 5, 2003). Initially, account-holders will only have access to static data and basic Account profile information necessary to establish an Account. Eventually, participants will derive the following benefits:

(a) Access to operational data through the ACE Portal;

(b) electronic interaction with CBP;

(c) receipt of status messages concerning their Account;

(d) access to integrated Account data from multiple system sources;

(e) ability to manage and disseminate information in an efficient and secure manner; and

(f) ability to electronically transmit the truck manifest and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

The authority for testing NCAP programs is set forth in 19 CFR 101.9(b), which enables the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP

Eligibility Criteria for Truck Carriers

To be eligible to become an ACE Account with access to the ACE Portal for subsequent participation in testing of the electronic truck manifest functionality, the truck carrier must simply have the capability of connecting to the Internet.

Account Application Process

The term "application", as used throughout this notice, is defined as a statement of intent from the truck carrier to establish an ACE Account and participate in the testing of electronic truck manifest functionality. Any truck carrier wishing to establish an ACE Account with access to the ACE Portal must submit an application, via e-mail, to the address specified in the **ADDRESSES** caption, above. Each truck carrier must include the following information when submitting its application to become an ACE Account:

1. Carrier Name;

2. Standard Carrier Alpha Code(s) (SCAC);

3. Statement certifying capability of connecting to the Internet; and

4. Name, address, and e-mail of point of contact to receive further information.

Any truck carrier providing incomplete information, or otherwise not meeting participation requirements will be notified and given the opportunity to resubmit its application.

Subsequent to receiving a complete application, CBP will contact a carrier for additional information in order to update the Account profile. Truck Carrier Account-holders will be required to acknowledge a continuing obligation to provide CBP with any updates or changes to the information originally submitted. All data submitted and entered into the carrier ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential.

Upon the issuance of a subsequent notice in the **Federal Register** that will provide more information on participation in the NCAP test of electronic truck manifest functionality, CBP will deploy an initial group of Truck Carrier Account-holders for participation in the NCAP test.

While CBP will accept applications to establish ACE Truck Carrier Accounts until further notice, qualifying applications for Truck Carrier Accounts not initially approved will be held by CBP pending further expansion of the NCAP test of electronic truck manifest functionality. CBP will notify truck carriers of the status of their application.

Once approved as a Truck Carrier Account-holder, each participant must designate one person as the ACE Portal Account Owner for the information entered into the participant's ACE Portal account. The Account Owner will be responsible for safeguarding the ACE Portal account information, controlling all disclosures of that information to authorized persons, authorizing user access to the ACE Portal account, and ensuring that access by authorized persons to the ACE Portal information is strictly controlled. The participant will also need to identify a point of contact for the testing of communications and software. Truck Carrier Account-holders are further reminded that participation in the automated electronic truck manifest functionality test is not confidential. Lists of approved participants will be made available to the public.

Test Evaluation Criteria

To ensure adequate feedback, participants are required to take part in an evaluation of this test. CBP also invites all interested parties to comment on the design, conduct and implementation of the test at any time. The final results will be published in the **Federal Register** and the CBP Bulletin as required by § 101.9(b) of the Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis;

2. Questionnaires from both trade participants and CBP addressing such issues as:

- Workload impact (workload shifts/ volume, cycle times, etc.);
- Cost savings (staff, interest, reduction in mailing costs, etc.);
- Policy and procedure accommodation;
- Trade compliance impact;
- Problem resolution;
- System efficiency;
- Operational efficiency;
- Other issues identified by the participant group.

Dated: January 30, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–2253 Filed 2–3–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): Announcement of a National Customs Automation Program Test of Periodic Monthly Payment Statement Process and Establishment of Broker Accounts in the ACE Secure Data Portal

AGENCY: Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces the Bureau of Customs and Border Protection's (CBP) plan to conduct a National Customs Automation Program test concerning periodic monthly deposit of estimated duties and fees. This notice provides a description of the test process, outlines the development and evaluation methodology to be used, sets forth eligibility requirements for participation, invites public comment on any aspect of the planned test, and opens the application period for participation.

This notice invites participation of the initial forty-one ACE Importer Accounts, and establishes a process by which their designated brokers can participate in filing entries and making payments related to the Periodic Monthly Statement.

DATES: The test will commence no earlier than April 14, 2004. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period. CBP must receive all statements affirming intent to participate from the initial forty-one ACE Importer Accounts, the list of designated brokers, and the designated broker applications, as set forth in this notice, by April 5, 2004, unless under exceptional circumstances, and with CBP approval, an extension is granted. CBP will process additional Importer Account applications as CBP expands the universe of participation for this test.

Expansion of this test to allow future applicants to participate may be delayed due to funding and technological constraints. Future phases of ACE may also be tested; however, the eligibility criteria may differ from the criteria listed in this notice. Acceptance into this test does not guarantee eligibility for, or acceptance into, future technical tests.

ADDRESSES: Comments concerning program and policy issues should be submitted to Mr. Robert B. Hamilton, Office of Finance, via e-mail at *Robert.b.hamilton@dhs.gov*. All statements affirming intent to participate in the test by the initial forty-one Importer Accounts, and new applications to establish ACE Importer and Broker Accounts should be submitted to Mr. Michael Maricich via email at *Michael.maricich@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: For questions regarding these Importer or Broker Accounts: Mr. Michael Maricich via email at *Michael.maricich@dhs.gov*, or by telephone at (703) 668–2406;

For questions regarding Periodic Monthly Statement payments: Mr. Robert Hamilton via email at *Robert.b.hamilton@dhs.gov*, or by telephone at (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

This document announces the Bureau of Customs and Border Protection's (CBP) plan to conduct a National Customs Automation Program (NCAP) test, under which test participants will be allowed to deposit estimated duties and fees on a monthly basis, based on a Periodic Monthly Statement issued by CBP. Participating importers and their designated brokers will be allowed to deposit estimated duties and fees no later than the 15th calendar day of the month following the month in which the goods are either entered or released, whichever comes first. (*See* section 383 of the Trade Act of 2002, Pub. L. 107–210, dated August 6, 2002, which amends section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)).

The authority for testing NCAP programs is set forth in 19 CFR 101.9(b), which enables the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP.

Development of ACE

The initial phase of the Customs and Border Protection Modernization Program (*see* North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2170 (December 8, 1993)) focuses on Trade Compliance and the development of ACE through NCAP. The purposes of ACE, successor to the Automated Commercial System (ACS), are to streamline business processes, to facilitate growth in trade, and to foster participation in global commerce, while ensuring compliance with U.S. laws and regulations. Development of ACE will consist of many releases. Each release, while individually achieving critical business needs, also will set forth the foundation for the subsequent releases.

The previous release of ACE involved testing the ability of importers and authorized parties to access their CBP data via the ACE Secured Data Portal (hereinafter, "ACE Portal"), with a focus on defining and establishing the Importer Account structure. (*See*, **Federal Register** notice published May 1, 2002 (67 FR 21800)). This test is the next step toward the full electronic processing of commercial importations in ACE, with a focus on identifying authorized importers and brokers to participate in the Periodic Monthly Statement process.

The benefits to participants in this test include having access to operational data through the ACE Portal, the capability of being able to interact electronically with CBP, and the capability of making payments of duties and fees on a periodic monthly basis.

Eligibility Criteria

The eligibility criteria for importer participation in the previous release of ACE, as set forth in the May 1, 2002, **Federal Register** notice (67 FR 21800), included the first two provisions listed below. For this test, importers and their designated brokers must satisfy two additional requirements. To be eligible for participation in this test, importers and their designated brokers must:

1. *Participate in the Customs Trade Partnership Against Terrorism (C-TPAT) program;* C–TPAT is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security. For further information, please refer to the CBP Web site at *http://www.cbp.gov*.
2. *Have the ability to connect to the Internet;*
3. *Have the ability to make periodic payment via ACH Credit or ACH Debit;* and
4. *Have the ability to file entry/entry summary via ABI (Automated Broker Interface).*

Description of the Test

Participants in the Periodic Monthly Statement test are required to schedule entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been designated for monthly payment. The Periodic Monthly Statement can be created on a port basis by the importer or broker, as is the case with existing daily statements in ACS. The Periodic Monthly Statement can be created on a national basis by an ABI filer. If an importer chooses to file the Periodic Monthly Statement on a national basis, it must use its filer code and schedule and pay the monthly statements. The Periodic Monthly Statement will be

routed under existing CBP procedures. Brokers will only view / receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI that lists information filed by another broker.

CBP will allow all entries currently eligible for placement on a daily statement to be placed on a Periodic Daily Statement, with the exception of reconciliation entries, NAFTA duty deferral entries, entries requiring the payment of excise taxes, and entries containing Census errors.

Entries for monthly payment will be processed as follows:

a. As entries are filed with CBP, the importer or its designated broker schedules them for monthly payment;

b. Those entries scheduled for monthly payment appear on the Preliminary Periodic Daily Statement;

c. The importer or its designated broker processes entry summary presentation transactions for Periodic Daily Statements within 10 working-days of the date of entry;

d. After summary information has been filed, the scheduled entries appear on the Final Periodic Daily Statement;

e. Entries appearing on the Final Periodic Daily Statements and scheduled for monthly payment appear on the Preliminary Periodic Monthly Statement. CBP will generate the Preliminary Periodic Monthly Statement on the 11th calendar day of the month following the month in which the merchandise is either entered or released, whichever comes first, unless the importer or designated broker selects an earlier date;

f. On the 15th of that month, for ACH Debit participants, CBP transmits the debit authorizations compiled in the Preliminary Periodic Monthly Statement from the Final Periodic Daily Statements to the financial institution, and the Preliminary Periodic Monthly Statement is marked as paid. The Final Periodic Monthly Statement indicating receipt of payment is generated by CBP, and is transmitted to the importer or its designated broker. ACH Debit participants must ensure that the money amount identified on the Preliminary Monthly Statement is, in fact, available in their bank account by the 15th of the month following the month in which the merchandise is either entered or released, whichever comes first.

g. ACH Credit participants must ensure that CBP receives payment no later than the 15th of that month. CBP must receive the settlement for the credit, and then the Preliminary Periodic Monthly Statement is marked as paid. The Final Periodic Monthly Statement indicating receipt of payment is generated by CBP, and is transmitted to the importer or its designated broker. For ACH Credit participants, if the 15th falls on a weekend or holiday, CBP must receive the settlement for the credit by the business day directly preceding such weekend or holiday.

h. For both ACH Credit and ACH Debit participants, CBP will generate the Final Periodic Monthly Statement on the night that payment is processed.

Participants should note that if they voluntarily remove an entry from a Periodic Daily Statement before expiration of the 10-working-day period after release, that entry may be placed on another Periodic Daily Statement falling within the same 10-working-day period. If, however, participants remove an entry from a Periodic Daily Statement or a Preliminary Monthly Statement after expiration of the 10-working-day period after release, then that entry must be paid individually, and the entry will automatically be the subject of a claim for liquidated damages for late payment of estimated duties.

Initial ACE Importer Accounts

This test will be conducted in a phased approach, with primary deployment scheduled for no earlier than April 14, 2004. The initial release of the Web-based account revenue functionality will involve the forty-one initial ACE Importer Accounts and their designated brokers. The forty-one initial ACE Importer Accounts were created based on applications submitted in response to the **Federal Register** notices of May 1, 2002 (67 FR 21800) and/or June 18, 2002 (67 FR 41572). Any of those initial applicants interested in participating in this test must submit, via email, a statement affirming their "intent to participate" and a list of any designated brokers who will be authorized to act on their behalf, no later than 60 days from date of publication of this notice in the **Federal Register**, unless under exceptional circumstances, and with CBP approval, an extension is granted.

ACE Broker Account Application Process

The term "application", as used throughout this notice, is defined as a statement of intent to participate in the Periodic Monthly Statement process. Designated brokers wishing to participate in this test and make Periodic Monthly Statement payment on behalf of participating importers must first establish an individual ACE Broker Account. Designated brokers must submit an application to establish an ACE Broker Account, via email, by no later than 60 days from date of publication of this notice in the **Federal Register**, unless under exceptional circumstances, and with CBP approval, an extension is granted. Each broker application for participation in this test must include the following information:

1. Broker Name;
2. Names of the initial forty-one importers participating in the test by whom they have been or will be designated as the authorized broker;
3. Unique Identification Number (EIN, SSN);
4. Filer Code;
5. Statement certifying participation in C–TPAT;
6. Statement certifying capability of connecting to the Internet;
7. Statement certifying capability of making periodic payment via ACH Credit or ACH Debit; and
8. Statement certifying capability of filing entry/entry summary via ABI.

Expansion of Participation

Participation in the periodic monthly payment process will be expanded in the future as funding allows. CBP will accept, hold, or reject additional Importer Account and Broker Account applications throughout the duration of the test. CBP will provide notice of expansion to the applicants as appropriate. New applicants interested in participating in this test must submit an application, per the **Federal Register** notice of May 1, 2002 (67 FR 21800), Application Process section, to CBP, and will be notified of the status of their application (*i.e.*, whether CBP has accepted their application for participation upon an initial expansion, or, is holding their application pending a further expansion of the test). CBP will notify any applicant not meeting the eligibility criteria or providing an incomplete application, and allow such applicant an opportunity to resubmit its application.

Other Responsibilities of Applicants

Upon accepting an applicant for participation in the Periodic Monthly Statement test, CBP may request additional information. Participants accept a continuing obligation to provide CBP with any updates or changes to the information originally submitted. All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential. CBP will provide participants with additional information about the content of the test.

All participants are required to provide a bond rider covering the

periodic payment of estimated duties. The language of the bond rider shall read as follows:

"By this rider to the Customs Form 301 No. _____, executed on by_____as principal(s), importer nos. _____, and _____, as surety, code no. _____, which is effective on_____, the principal(s) and surety agree that this bond covers all periodic payments of estimated duties and fees no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever comes first, as provided in 19 U.S.C. 1505(a), and all conditions set out in section 113.62, Customs Regulations, are applicable thereto."

Each participant must designate one person as the ACE Portal Account Owner for the information entered into the participant's ACE Portal account. The Account Owner will be responsible for safeguarding the ACE Portal account information, controlling disclosures of that information to authorized persons, authorizing user access to the ACE Portal account, and ensuring that access by authorized persons to the ACE Portal account information is strictly controlled. The participant will need to identify a point of contact for the testing of communications and software.

Participants are further reminded that participation in this test is not confidential. Lists of approved participants will be made available to the public.

Suspension of Regulations

During the testing of the Periodic Monthly Statement process, CBP will suspend provisions in Parts 24, 141, 142, and 143 of the Customs Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, and deposit of estimated duties and fees. Absent any alternate procedure set forth in the above description of the test, the current regulations apply.

Misconduct Under the Test

If a test participant fails to follow the terms and conditions of this test, fails to exercise reasonable care in the execution of participant obligations, fails to abide by applicable laws and regulations, fails to deposit duties or fees in a timely manner, misuses the ACE Portal, engages in any unauthorized disclosure or access to the ACE Portal, or engages in any activity which interferes with the successful evaluation of the new technology, the participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test.

Suspensions for misconduct will be administered by the Executive Director, Trade Compliance and Facilitation. A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of Field Operations within 15 calendar days of the notification date. Should the participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately.

Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, conduct and implementation of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the CBP Bulletin as required by § 101.9(b) of the Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis;

2. Questionnaires from both trade participants and CBP addressing such issues as:

- Workload impact (workload shifts/volume, cycle times, etc.);
- Cost savings (staff, interest, reduction in mailing costs, etc.);
- Policy and procedure accommodation;
- Trade compliance impact;
- Problem resolution;
- System efficiency;
- Operational efficiency;
- Other issues identified by the participant group.

Dated: January 30, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–2254 Filed 2–3–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3192–EM]

Connecticut; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3192–EM), dated January 15, 2004, and related determinations.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 2004, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Connecticut, resulting from the record/near record snow on December 5–7, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the

Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared emergency:

Fairfield, Hartford, Litchfield, New Haven, Tolland, and Windham Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2259 Filed 2–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3190–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3190–EM), dated January 15, 2004, and related determinations.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 2004, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Maine, resulting from the record/ near record snow on December 6–7, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared emergency:

Aroostook, Cumberland, Franklin, Hancock, Kennebec, Oxford, Penobscot, Piscataquis, and Somerset Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2256 Filed 2–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3190–EM]

Maine; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Maine (FEMA–3190–EM), dated January 15, 2004, and related determinations.

EFFECTIVE DATE: January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Maine is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 15, 2004:

Androscoggin and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2257 Filed 2–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3191–EM]

Massachusetts; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3191-EM), dated January 15, 2004, and related determinations.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 2004, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the Commonwealth of Massachusetts, resulting from the record/near record snow on December 6–7, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared emergency:

Barnstable, Berkshire, Bristol, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2258 Filed 2–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3193–EM]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3193–EM), dated January 15, 2004, and related determinations.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 2004, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New Hampshire, resulting from the record/near record snow on December 6–7, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared emergency:

Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, and Sullivan Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2260 Filed 2–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Statewide Per Capita Threshold for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the statewide per capita threshold for recommending cost share adjustments for disasters declared on or after January 1, 2004, through December 31, 2004.

DATES: *Effective Date:* February 4, 2004. *Applicability Date:* This notice applies to major disasters declared on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 206.47, FEMA annually adjusts the statewide per capita threshold that is used to recommend an increase of the Federal cost share from 75 percent (75%) to not more than 90 percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Stafford Act. The adjustment to the threshold is based on the Consumer Price Index for All Urban

Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2004, through December 31, 2004, the qualifying threshold is $106 of State population.

We base the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.9 percent for the 12-month period ended in December 2003. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 15, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2261 Filed 2–3–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: The Student and Exchange Visitor Information Systems (SEVIS); File No. OMB–30.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The ICE published a notice in the **Federal Register** on October 2, 2003 at 68 FR 56847. The notice allowed for a 60-day public review and comment period on the extension of a currently approved information collection.

The purpose of this notice is to allow an additional 30 days for public comments to satisfy the requirements of the Paperwork Reduction Act for an extension of this information collection for a period not to exceed three years. Comments are encouraged and will be accepted until March 5, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* The Student and Exchange Visitor Information System.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–30); Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This system will be used by institutions and sponsors to provide notification, reports, updates, and data required by regulations on the institution and program, as well as on student and exchange visitors. Additionally, ICE and the Department of State will use SEVIS to adjudicate benefits and services, track student and exchange visitor data, and to monitor institution and program sponsor compliance with current regulations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 625,135 applicants and 5 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,040,850 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Citizenship and Immigration Services (CIS), U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Office of the Chief Information Officer, U.S. Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: January 30, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–2303 Filed 2–3–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; NEPA Compliance Checklist

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: TSA has submitted a request for emergency processing of a new public information collection to the Office of Management and Budget (OMB) for review and immediate

clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collection and its expected burden.

DATES: Send your comments by March 5, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Information Management Programs, Transportation Security Administration HQ, West Tower, Floor 4, TSA–17, 601 S. 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration

Title: NEPA Compliance Checklist.

OMB Control Number: New collection.

Type of Request: Emergency processing request of new collection.

Forms(s): NEPA Compliance Checklist.

Affected Public: Applicants for grant funds.

Abstract: The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, requires agencies to consider whether major Federal actions, including the awarding of grants, will have a significant impact on the environment. TSA will be providing a checklist to collect information from grant applicants to determine if funded projects will require the completion of an Environmental Assessment. The subject information includes questions on the impact to natural resources and historic sites; any likely controversy, especially with regards to any impact on housing and development; any traffic or noise increases; impacts on air and water quality; consistency with local environmental laws; and any direct or indirect effects on humans by way of significant impact on the environment.

Number of Respondents: 1300.

Estimated Annual Burden Hours: It is estimated that this checklist will take 30 minutes for each applicant to prepare, for a total burden of 650 hours.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on January 23, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–2363 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Office of Acquisition and Property Management; Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Office of Acquisition and Property Management (PAM), Office of the Secretary, Interior.

ACTION: Notice of renewal of the OMB approval of information collection for Private Rental Survey (OMB Control Number 1084–0033) and request for comment.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "Private Rental Survey." We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by March 5, 2004.

ADDRESSES: You may direct comments to the Desk Officer for the Department of the Interior, OMB–OIRA, and to submit them via e-mail to *OIRA_DOCKET@omb.eop.gov* or via facsimile to (202) 395–6566. Mail or hand carry a copy of your comments to the Department of the Interior; Office of Acquisition and Property Management; Attention: Linda Tribby; Mail Stop 5512; 1849 C Street, NW., Washington, DC 20240. Comments may also be submitted electronically to *linda_tribby@ios.doi.gov*. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identify, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Linda Tribby, Departmental Quarters Program Manager, telephone (202) 219–0728.

SUPPLEMENTARY INFORMATION:

Title: Private Rental Survey.

OMB Control Number: 1084–0033.

Bureau Form Number: OS–2000 and OS–2001.

Abstract: Public Law 88–459 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the rental, utility charges, and charges for related services to occupants of Government Furnished Quarters (GFQ) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, PAM conducts housing surveys in support of quarters management programs for the Departments of the Interior (DOI), Agriculture, Commerce, Defense, Justice, Transportation, Treasury, Health and Human Services, and Veterans Affairs. This collection of information provides data that helps DOI as well as other Federal agencies to manage GFQ in compliance with the requirements of OMB Circular A–45 (Revised). If the collection activity were not performed, there would be no basis for determining open market rental costs for GFQ.

On November 21, 2003, we published a **Federal Register** notice (volume 68, Number 225, page 65726–65727) with the required 60-day comment period announcing that we would submit this collection of information to OMB for approval. We received no comments in response to the notice.

Frequency of Collection: We survey each of 15 regions every fourth year, surveying three to four regions each year.

Description of Respondents: Individual property owners and small businesses or organizations (real estate managers, appraisers, or property managers).

Estimated Annual Responses: 3,872.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 767 hours (refer to burden chart). There are no recordkeeping requirements.

RESPONSE BURDEN CHART

Form No.	Number of respondents	Number of responses per respondent	Total annual per responses	Hours per response (minutes)	Burden hours
OS–2000	3,672	1	3,672	12	734
OS–2001	200	1	200	10	33
Total	3,872		3,872		767

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to:

(a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Enhance the quality, usefulness, and clarity of the information to be collected; and,

(d) Minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

If you with to comment in response to this notice, send your comments directly to the office listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by March 5, 2004.

PAM Information Collection Clearance Officer: Debra E. Sonderman, (202) 208–6352.

Dated: January 29, 2004.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 04–2262 Filed 2–3–04; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Committee.

DATES: February 25, 2004, at 10 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature discussions about the small parcel habitat program.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 04–2222 Filed 2–3–04; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP4–0082]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) will meet on February 25, 2004, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m. and adjourn about 4 p.m. Topics on the meeting agenda include:

- BLMs Proposed Rule to Revise Federal Grazing Regulations (published in the **Federal Register** on December 8, 2003).
- Environmental Impact Statement on the Proposed Grazing Rule (released January 2, 2004).

The RAC meeting is open to the public, and there will be an opportunity for public comments at 10:30 a.m. Information to be distributed to Council members for their review is requested in written format 10 days prior to the Council meeting date.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: January 29, 2004.
Kevin R. Devitt,
Acting District Manager.
[FR Doc. 04–2251 Filed 2–3–04; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1030–PH]

Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

DATES: March 4 and 5, 2004. The meeting will begin at 8 a.m. each day and end at approximately 3 p.m. on March 5th. The public comment period will be from 8 a.m. to 9 a.m. on March 5, 2004. The meeting will be held at the Grant Creek Inn, 5280 Grant Creek Road, Missoula, Montana, because Missoula is centrally located for Council members traveling from the northern and south-central parts of Idaho.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda items for the March 4 and 5, 2004 meeting include:

- New RAC member orientation
- Rangeland Ecology training
- Development of an Annual Work Plan
- Subgroup reports and follow-up on Off-Highway-Vehicles, the Wild Horse Program, and other natural resource issues.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: January 30, 2004.
Lewis M. Brown,
District Manager.
[FR Doc. 04–2393 Filed 2–3–04; 8:45 am]
BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held February 24 & 25, 2004, at the Grand Union Hotel in Fort Benton, Montana. The February 24 meeting will begin at 1 p.m. with a 30-minute public comment period. The meeting is scheduled to adjourn at approximately 7:30 p.m. The February 25 meeting will begin at 8 a.m. with a 60-minute public comment period. This meeting will also adjourn at approximately 7:30 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. At this meeting the council will discuss:

An overview of the alternative formulation for the Upper Missouri River Breaks National Monument Resource Management Plan;

Recommendations for a working preferred alternative for this management plan;

Field manager update;

And, additional updates on the Fort Benton Interpretive Center, proposed grazing regulations, the Blackleaf Environmental Impact Statement and the Lewis and Clark Bicentennial.

All meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the timer for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: Dave Mari, Lewistown Field Manager, Lewistown Field Office, Airport Road, Lewistown, Montana 59457, (406) 538–7461.

Dated: January 30, 2004.
David L. Mari,
Lewistown Field Manager.
[FR Doc. 04–2398 Filed 2–3–04; 8:45 am]
BILLING CODE 4310–$$–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2004–2 CARP]

Copyright Arbitration Royalty Panels; List of Arbitrators

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of the 2004–2005 CARP arbitrator list.

SUMMARY: The Copyright Office is publishing the list of arbitrators eligible for service on a Copyright Arbitration Royalty Panel ("CARP") during 2004 and 2005. This list will be used to select the arbitrators who will serve on panels initiated in 2004 and 2005 for determining the distribution of royalty fees or the adjustment of royalty rates.

EFFECTIVE DATE: February 4, 2004.

FOR FURTHER INFORMATION CONTACT: Susan N. Grimes, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION:

Background

For royalty rate adjustments and distributions that are in controversy, the Copyright Act requires the selection of a Copyright Arbitration Royalty Panel ("CARP") consisting of three arbitrators from "lists provided by professional arbitration associations." *See* 17 U.S.C. 802(b). The Librarian of Congress selects two of the arbitrators for a CARP from a list of nominated arbitrators; those selected then choose a third arbitrator to serve as chairperson of the panel. If the two arbitrators cannot agree, the Librarian is instructed to select the third arbitrator.

On December 7, 1994, the Copyright Office issued final regulations implementing the CARP selection

process. 59 FR 63025 (December 7, 1994). Subsequently, these rules were amended to provide for the generation of a new list of nominees biennially. 61 FR 63715 (December 2, 1996). Section 251.3(a) of the regulations allows any professional arbitration association or organization to nominate qualified individuals, as described in § 251.5, to serve as arbitrators on a CARP. The regulations require that the submitting arbitration association supply the following information for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant. 37 CFR 251.3(a).

Section 251.3(b) of the regulations requires the Copyright Office to publish a list of qualified persons and mandates that this list must include between 30 and 75 names of persons who were nominated from at least three arbitration associations. The newly comprised list of arbitrators will be in effect until the end of the 2005 calendar year, and any arbitrator selected for a CARP during 2004 and 2005 will come from this list. The list includes the name of the nominee and the nominating association.

The publication of today's list satisfies the requirement of 37 CFR 251.3. The information submitted by the arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. Thus, for example, if the Librarian is required to convene a CARP in 2004 for a royalty fee distribution, parties to that proceeding may review that information as a means of formulating objections to listed arbitrators under § 251.4. The Licensing Division of the Copyright Office is located in the Library of Congress, James Madison Building, LM–458, 101 Independence Avenue, SE., Washington, DC 20540.

Deadline for Filing Financial Disclosure Statement

Section 251.32(a) of the CARP rules provides that, within 45 days of their nomination, each nominee must "file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress." The Copyright Office sent financial disclosure statements to the nominating associations, with specific instructions for completing and filing the statement, and asked each organization to distribute the forms to its nominees for the CARP arbitrator list. The Librarian of Congress will use the financial disclosure form to determine what financial conflicts of interest, if any, may preclude the nominee from serving as an arbitrator in a CARP proceeding. Unlike information submitted by the arbitration associations under § 251.3(a), the information contained in the financial disclosure statements is confidential and is not available to the public or to the parties to the proceeding. Each nominee has filed a completed financial disclosure form with the Librarian of Congress.

The 2004–2005 CARP Arbitrator List

The Honorable James M. Bailey—Judicial Dispute Resolution, Inc
Dorothy K. Campbell—Intellectual Property Neutrals
Jerry Cohen—JAMS
The Honorable John W. Cooley—Judicial Dispute Resolution, Inc
Robert Davidson—JAMS
Mark J. Davis—American Arbitration Association
The Honorable Gino L. DiVito—Judicial Dispute Resolution, Inc
The Honorable Michael W. Doheny—Arbitration & Mediation Services
Edward Dreyfus—American Arbitration Association
Robert Faulkner—JAMS
Bruce G. Forrest, Esq.—Arbitration & Mediation Services
Michael Getty—JAMS
Margery F. Gootnick, Esq.—Arbitration & Mediation Services
Jerry Grissom—JAMS
The Honorable Jeffrey S. Gulin—Arbitration & Mediation Services
William Hartgering—JAMS
Katherine Hendricks—American Arbitration Association
Harold Himmelman—JAMS
The Honorable Louis N. Hurwitz—Arbitration & Mediation Services
Nancy F. Lesser—American Arbitration Association
Richard Andrew Levie—JAMS
Joel Levine—American Arbitration Association
The Honorable John P. Mahoney—Arbitration & Mediation Services
William McDonald—JAMS
Gloria Messinger—American Arbitration Association
Cecilia Morgan—JAMS
Cherly Niro—Judicial Dispute Resolution, Inc
Timothy T. Patula—American Arbitration Association
Alexander Polsky—JAMS
Kathleen Roberts—JAMS
Richard Sayler—American Arbitration Association
Vivien Shelanski—JAMS
James Sullivan—JAMS
Pamela Tynes—JAMS
Curtis von Kann—JAMS
Eric Van Loon—JAMS
The Honorable Michael Wolf—Arbitration & Mediation Services
Michael Young—JAMS
Gregg Zeggarelli—American Arbitration Association

Dated: January 29, 2004.

David O. Carson,

General Counsel.

[FR Doc. 04–2288 Filed 2–3–04; 8:45 am]

BILLING CODE 1410–33–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. PA 2004–1]

Notice of New Delivery Policy

AGENCY: Copyright Office, Library of Congress.

ACTION: New procedure for hand deliveries to Copyright Office General Counsel by private parties.

SUMMARY: The Copyright Office is adopting a new policy for delivering documents to the Office of the General Counsel.

EFFECTIVE DATE: February 9, 2004.

ADDRESSES: Hand deliveries for the Office of the General Counsel made by private parties must be delivered to the following location in the Library of Congress: Public Information Office, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Senior Attorney, Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION: Beginning February 9, 2004, all hand deliveries from private parties [1] for the Copyright

[1] Hand deliveries made by commercial couriers and messengers may no longer be made directly to

Continued

Office General Counsel, including all comments in rulemaking proceedings, all filings in a Copyright Arbitration Royalty Panel proceeding, and all litigation-related materials, must be delivered to the Public Information Office of the Copyright Office. The Public Information Office is located on the fourth floor of the James Madison Memorial Building of the Library of Congress, Room LM–401, 101 Independence Avenue, SE., Washington, DC, near the Capitol South Metro stop. The Office is open Monday-Friday, 8:30 a.m. to 5 p.m., except Federal holidays.

To insure that each document is directed to the appropriate office within the Copyright Office, documents for delivery to the General Counsel should be addressed in the following manner: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, First and Independence Avenue, SE., Washington, DC 20559–6000.

Visitors to the Library of Congress are reminded that they must follow certain security procedures upon entry and exit. These procedures may be found on the Copyright Office Web site at *http://www.loc.gov/rr/security/*.

Dated: January 30, 2004.

Marilyn J. Kretsinger,

Associate General Counsel.

[FR Doc. 04–2289 Filed 2–3–04; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

January 26, 2004.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC, on February 12–13, 2004.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 12–13, 2004, will not be open to the public pursuant to subsections (c)(4),(c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on February 12, 2004, will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.: Education Programs—Room 715, Federal/State Partnership—Room 507, Preservation and Access—Room 415, Public Programs—Room 420, Research Programs—Room 315.

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned: Education Programs—Room 715, Federal/State Partnership—Room 507, Preservation and Access—Room 415, Public Programs—Room 420, Research Programs—Room 315.

2–3:30 p.m.: Jefferson Lecture—Room 527.

The morning session on February 13, 2004, will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Budget Report
5. Reports on Policy and General Matters
a. Education Programs
b. Federal/State Partnership
c. Preservation and Access
d. Public Programs
e. Research Programs
f. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Mr. Michael McDonald, Acting, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael McDonald,

Acting, Advisory Committee Management Officer.

[FR Doc. 04–2236 Filed 2–3–04; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by April 5, 2004, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Medical Clearance Process for Deployment to Antarctica.

OMB Number: 3145–0177.

Expiration Date of Approval: May 31, 2004.

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the Library of Congress. *See* 68 FR 70039 (Dec. 16, 2003). As of December 29, 2003, commercial couriers and messengers must deliver all materials for the Library of Congress to the Congressional Courier Acceptance Site ("CCAS"), located on Second and D Streets, NE. The CCAS will accept items from couriers with proper identification, *e.g.*, a valid driver's license, Monday through Friday between 8:30 a.m. and 4 p.m.

Type of Request: Intent to seek approval to renew an information collection for three years.

Abstract

A. Proposed Project

All individuals who anticipate deploying to Antarctica and to certain regions of the Arctic under auspices of the United States Antarctica Program are required to take and pass a rigorous physical examination prior to deploying. The physical examination includes a medical history, medical examination, a dental examination and for those persons planning to winter over in Antarctica a psychological examination is also required. The requirement for this determination of physical status is found in 42 U.S.C. 1870 (Authority) and 62 FR 31522, June 10, 1997 (Source), unless otherwise noted. This part sets forth the procedures for medical screening to determine whether candidates for participation in the United States Antarctic [(Page 216)] Program (USAP) are physically qualified and psychologically adapted for assignment or travel to Antarctica. Medical screening examinations are necessary to determine the presence of any physical or psychological conditions that would threaten the health or safety of the candidate or other USAP participants or that could not be effectively treated by the limited medical care capabilities in Antarctica.

Presidential Memorandum No. 6646 (February 5, 1982) (available from the National Science Foundation, Office of Polar Programs, room 755, 4201 Wilson Blvd., Arlington, VA 22230) sets forth the National Science Foundation's overall management responsibilities for the entire United States national program in Antarctica.

B. Use of the Information

1. *Form NSF–1420,* National Science Foundation

• Polar Physical Examination (Antarctica/Arctic/Official Visitors) Medical History, will be used by the individual to record the individual's family and personal medical histories. It is a five-page form that includes the individual's and the individual's emergency point-of-contact's name, address, and telephone numbers. It contains the individual's email address, employment affiliation and dates and locations of current and previous polar deployments. It also includes a signed certification of the accuracy of the information and understandings of refusal to provide the information or providing false information. The agency's contractor's reviewing physician and medical staff complete the sections of the form that indicated when the documents were received and whether or not the person qualified for polar deployment, in which season qualified to deploy and where disqualified the reasons.

2. *Form NSF–1421,* Polar Physical Examination

• Antarctica/Arctic, will be used by the individual's physician to document specific medical examination results and the overall status of the individual's health. It is a two-page form which also provides for the signatures of both the patient and the examining physician, as well as contact information about the examining physician. Finally, it contains the name, address and telephone number of the agency's contractor that collects and retains the information.

3. *Form NSF–1422,* National Science Foundation Polar Physical Examination (Antarctica/Arctic/Official Visitors) Medical History Interval Screening, will only be used by individuals who are under the age of 40 and who successfully took and passed a polar examination the previous season or not more than 24 months prior to current deployment date. It allows the otherwise healthy individual to update his or her medical data without having to take a physical examination every year as opposed to those over 40 years of age who must be examined annually.

4. *Form NSF–1423,* Polar Dental Examination-Antarctica/Arctic/Official Visitors, will be used by the examining dentist to document the status of the individual's teeth and to document when the individual was examined. It will also be used by the contractor's reviewing dentist to document whether or not the individual is dentally cleared to deploy to the polar regions.

5. *Medical Waivers:* Any individual who is determined to be not physically qualified for polar deployment may request an administrative waiver of the medical screening criteria. This information includes signing a Request for Waiver that is notarized or otherwise legally acceptable in accordance with penalty of perjury statutes, obtaining an Employer Statement of Support. Individuals on a case-by-case basis may also be required to submit additional medical documentation and a letter from the individual's physician(s) regarding the individual's medical suitability for Antarctic deployment.

6. *Other information requested:* In addition to the numbered forms and other information mentioned above, the USAP medical screening package includes the following:

—Medical Risks for NSF-Sponsored Personnel Traveling to Antarctica—multi-copy form
—the NSF Privacy Notice
—the NSF Medical Screening for Blood-borne Pathogens/Consent for HIV Testing—(multi-copy)
—the NSF Authorization for Treatment of Field-Team Member/Participant Under the Age of 18 Years—(multi-copy). This should only be sent to the individuals who are under 18 years of age.
—the *Dear Doctor* and *Dear Dentist* letters, which provide specific laboratory and x-ray requirements, as well as other instructions.

7. *There are two other, non-medical forms included in the mailing:*

—the Personal Information Form-NSF Form Number 1424 includes a Privacy Act Notice. This form is used to collect information on current address and contact numbers, date and place of birth, nationality, citizenship, social security number, passport number, emergency point of contact information, travel dates, clothing sizes so that we may properly outfit those individuals who deploy, work-site information and prior deployment history.
—the Participant Notification—Important Notice for Participants in the United States Antarctic Program. This form provides information on the laws, of the nations through which program participants must transmit in route to Antarctica, regarding the transport, possession and use of illegal substances and the possibility of criminal prosecution if caught, tried and convicted.

Estimate of Burden: Public reporting burden for this collection of information varies according to the overall health of the individual, the amount of research required to complete the forms, the time it takes to make an appointment, take the examination and schedule and complete any follow-up medical, dental or psychological requirements and the completeness of the forms submitted. The estimated time is up to six weeks from the time the individual receives the forms until he or she is notified by the contractor of their final clearance status. An additional period of up to eight weeks may be required for the individual who was disqualified to be notified of the disqualification, to request and receive the waiver packet, to obtain employer support and complete the waiver request, to do any follow-up testing, to return the waiver request to the contractor plus any follow-up information, for the contractor to get the completed packet to the National Science Foundation, for

the NSF to make and promulgate a decision.

Respondents: All individuals deploying to the Antarctic and certain Arctic areas under the auspices of the United States Antarctic Program must complete these forms. There are approximately 3,000 submissions per year, with a small percentage (c.3%) under the age of 40 who provide annual submissions but with less information.

Estimated Number of Responses Per Form: Responses range from 2 to approximately 238 responses.

Estimated Total Annual Burden on Respondents: 28,728 hours.

Frequency of Responses: Individuals must complete the forms annually to be current within 12 months of their anticipated deployment dates. Depending on individual medical status some persons may require additional laboratory results to be current within two to six weeks of anticipated deployment.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 29, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–2213 Filed 2–3–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI; ASLBP No. 97–732–02–ISFSI]

Private Fuel Storage, L.L.C.; Notice of Reconstitution

Pursuant to 10 CFR 2.721, the Atomic Safety and Licensing Board chaired by Administrative Judge Michael C. Farrar in the above captioned *Private Fuel Storage, L.L.C.* proceeding is hereby reconstituted by appointing Administrative Judge Paul B. Abramson in place of Administrative Judge Jerry R. Kline.

In accordance with 10 CFR 2.701, henceforth all correspondence, documents, and other material relating to any matter in this proceeding over which the Licensing Board chaired by Administrative Judge Farrar has jurisdiction should be served on Administrative Judge Abramson as follows: Administrative Judge Paul B. Abramson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 29th day of January, 2004.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E4–181 Filed 2–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed LES Gas Centrifuge Uranium Enrichment Facility

ACTION: Notice of Intent (NOI).

SUMMARY: Louisiana Energy Services (LES) submitted a license application on December 12, 2003, that proposes the construction, operation and decommissioning of a gas centrifuge uranium enrichment facility to be located near Eunice, New Mexico. The U.S. Nuclear Regulatory Commission (NRC), in accordance with the National Environmental Policy Act (NEPA) and its regulations at 10 CFR part 51, announces its intent to prepare an Environmental Impact Statement (EIS). The EIS will examine the potential environmental impacts of the proposed LES facility.

DATES: The public scoping process required by NEPA begins with publication of this NOI and continues until March 18, 2004. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical.

The NRC will conduct a public scoping meeting to assist in defining the appropriate scope of the EIS, including the significant environmental issues to be addressed. The meeting date, times and location are listed below:

- *Meeting date:* March 4, 2004.
- *Meeting location:* Eunice Community Center, 1115 Avenue I, Eunice, NM.
- *Scoping meeting time:* 7 p.m. to 10 p.m.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–3103 when submitting comments. Due to the current mail situation in the Washington, DC area, commentors are encouraged to send comments electronically to *LES_EIS@nrc.gov* or by facsimile to (301) 415–5398, ATTN.: Melanie Wong.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the license review of the LES application, please contact: Tim Johnson at (301) 415–7299. For general information on the NRC NEPA process, or the environmental review process related to the LES application, please contact: Melanie Wong at (301) 415–6262.

Information and documents associated with the LES project, including the LES license application (submitted on December 12, 2003), are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

LES submitted a license application and an environmental report for a gas centrifuge uranium enrichment facility to the NRC on December 12, 2003. The NRC will evaluate the potential environmental impacts associated with LES enrichment facility in parallel with the review of the license application. This environmental evaluation will be documented in draft and final Environmental Impact Statements in accordance with NEPA and NRC's implementing regulations at 10 CFR part 51.

2.0 LES Enrichment Facility

The LES facility, if licensed, would enrich uranium for use in manufacturing commercial nuclear fuel for use in power reactors. Feed material would be natural (not enriched) uranium in the form of uranium hexafluoride (UF_6). LES proposes to use centrifuge technology to enrich isotope

uranium-235 in the uranium hexafluoride to up to 5 percent. The centrifuge would operate at below atomospheric pressure. The capacity of the plant would be up to 3 million separative work units (SWU) (SWU relates to a measure of the work used to enrich uranium). The enriched UF_6 would be transported to a fuel fabrication facility. The depleted UF_6 would be stored on site until it can be sold or disposed of commercially, or by the Department of Energy.

3.0 Alternatives To Be Evaluated

No-Action—The no-action alternative would be to not build the proposed LES gas centrifuge uranium enrichment facility. Under this alternative, the NRC would not approve the license application. This serves as a baseline for comparison.

Proposed action—The proposed action involves the construction, operation, and decommissioning of a gas centrifuge uranium enrichment facility located near Eunice, NM. The applicant would be issued an NRC license under the provisions of 10 CFR parts 30, 40, and 70.

Other alternatives not listed here may be identified through the scoping process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the EIS:

- *Land Use:* Plans, policies and controls;
- *Transportation:* Transportation modes, routes, quantities, and risk estimates;
- *Geology and Soils:* Physical geography, topography, geology and soil characteristics;
- *Water Resources:* Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- *Ecology:* Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- *Air Quality:* Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- *Noise:* Ambient, sources, and sensitive receptors;
- *Historical and Cultural Resources:* Historical, archaeological, and traditional cultural resources
- *Visual and Scenic Resources:* Landscape characteristics, manmade features and viewshed;
- *Socioeconomics:* Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;
- *Environmental Justice:* Potential disproportionately high and adverse impacts to minority and low-income populations;
- *Public and Occupational Health:* Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
- *Waste Management:* Types of wastes expected to be generated, handled, and stored; and
- *Cumulative Effects:* Impacts from past, present and reasonably foreseeable actions at, and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to, or deletions from this list may occur as a result of the public scoping process.

5.0 Scoping Meeting

One purpose of this NOI is to encourage public involvement in the EIS process, and to solicit public comments on the proposed scope and content of the EIS. The NRC will hold a public scoping meeting in Eunice, New Mexico, to solicit both oral and written comments from interested parties.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

- Ensure that concerns are identified early and are properly studied;
- Identify alternatives that will be examined;
- Identify significant issues that need to be analyzed;
- Eliminate unimportant issues; and
- Identify public concerns.

The scoping meeting will begin with NRC staff providing a description of the NRC's role and mission. A brief overview of the licensing process will be followed by a brief description of the environmental review process. The bulk of the meeting will be allotted for attendees to make oral comments.

6.0 Scoping Comments

Written comments should be mailed to the address listed above in the **ADDRESSES** section.

The NRC staff will make the scoping summaries and project-related materials available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* The scoping meeting summaries and project-related materials will also be available on the NRC's LES Web page: *http://www.nrc.gov/materials/fuel-cycle-fac/lesfacility.html* (case sensitive).

7.0 The NEPA Process

The EIS for the LES facility will be prepared according to the National Environmental Policy Act of 1969 and the NRC's NEPA Regulations at 10 CFR part 51.

After the scoping process is complete, the NRC and it's contractor will prepare a draft EIS. A 45-day comment period on the draft EIS is planned, and public meetings to receive comments will be held approximately three weeks after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register,** on NRC's LES Web page, and in the local news media when the draft EIS is distributed. The final EIS will incorporate public comments received on the draft EIS.

Signed in Rockville, MD this 16th day of January, 2004.

For The Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E4–179 Filed 2–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA–XX–XXXX (Redacted)]

In the Matter of all Licensees Authorized to Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Possess Certain Radioactive Material of Concern and All Other Persons Who Obtain Safeguards Information Described Herein; Order Imposing Additional Security Measures (Effective Immediately)

I

The Licensees identified in Attachment 1[1] to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S.

[1] Attachment 1 contains official use only sensitive information and will not be released to the public.

Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing them to manufacture or initially transfer items containing radioactive material for sale or distribution. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements set forth in Attachment 2 on certain manufacturing and distribution licensees identified in Attachment 1 of this Order [2] who currently possess, or have near term plans to possess, high-risk radioactive material of concern. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources. Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. The Commission has determined that the security measures contained in Attachment 2 of this Order contain safeguards information and will not be released to the public as per "Order Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately)," issued November 23, 2003, regarding the protection of safeguards information."

To provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing possession of high-risk radioactive material of concern shall implement the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR part 32, it is hereby ordered, effective immediately, that all Licensees identified in Attachment 1 to this Order shall comply with the requirements of this Order as follows:

A. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order. The Licensee shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by July 12, 2004, or the first day that radionuclides of concern at or above threshold limits (*i.e.*, high-risk radioactive material), also identified in Attachment 2, are possessed, which ever is later.

B. 1. The Licensee shall, within twenty-five (25) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty-five (25) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. The Licensee shall, within twenty-five (25) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment 2.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken

[2] Attachment 1 contains official use only sensitive information and Attachment 2 contains safeguards information and will not be released to the public.

in response to this order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be safeguards information shall be put in a separate enclosure or attachment and, marked as "safeguards information—modified handling" and mailed (no electronic transmittals, *i.e.*, no e-mail or fax) to the NRC.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty-five (25) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final twenty-five (25) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 12th day of January, 2004.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E4–180 Filed 2–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 13 of Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," has been reprinted, with a January 2004 date, to correct page 14, which had incomplete and duplicative text. The electronic versions of this guide, on the NRC Web page and in the ADAMS system, have had the correct page 14 since they were posted, but the printed version had an incorrect page 14. No changes were made in this version except to change page 14 and the date of the guide.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. W.E. Norris, (301)415–6796; email *wen@nrc.gov*.

Regulatory guides are available for inspection or downloading at the NRC's Web site at *www.nrc.gov* under NRC Documents and in NRC's ADAMS System at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated in Rockville, MD, this 20th day of January, 2004.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E4–178 Filed 2–3–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Deborah Grade, Director, Washington Services Branch, Center for Talent Services, Division for Human Resources Products and Services. (202) 606–5027.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between December 1, 2003 and December 31, 2003. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments for December 2003.

Schedule B

No Schedule B appointments for December 2003.

Schedule C

The following Schedule C appointments were approved for December 2003:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS00040 Deputy to the Associate Director for Legislative Affairs (Senate) to the Assistant Director for Legislative Affairs. Effective December 4, 2003.

Office of National Drug Control Policy

QQGS00025 Legislative Analyst to the Associate Director, Legislative Affairs. Effective December 3, 2003.

Office of the United States Trade Representative

TNGS00012 Confidential Assistant to the United States Trade Representative. Effective December 9, 2003.

Section 213.3304 Department of State

DSGS60718 Protocol Officer to the Deputy Chief of Protocol. Effective December 11, 2003.

Section 213.3305 Department of the Treasury

DYGS00437 Special Assistant to the Deputy Assistant Secretary and Chief Human Capital Officer. Effective December 31, 2003.

Section 213.3306 Department of the Defense

DDGS16737 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective December 4, 2003.

DDGS16776 Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller) and Deputy Under Secretary of Defense (Management Reform). Effective December 16, 2003.

DDGS16780 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective December 17, 2003.

DDGS00757 Special Assistant to the Under Secretary of Defense (Policy). Effective December 22, 2003.

DDGS00770 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs). Effective December 30, 2003.

Section 213.3310 Department of Justice

DJGS00390 Counsel to the Assistant Attorney General (Legal Counsel). Effective December 30, 2003.

Section 213.3311 Department of Homeland Security

DMGS00162 Director of Community Affairs to the Assistant Secretary for Plans, Programs and Budgets. Effective December 2, 2003.

DMGS00166 Executive Assistant to the Director, State and Local Affairs. Effective December 2, 2003.

DMGS00170 Special Assistant (Advance/External Affairs) to the Under Secretary for Emergency Preparedness and Response. Effective December 4, 2003.

DMGS00149 Executive Assistant to the Ombudsman. Effective December 9, 2003.

DMGS00154 Legislative Policy Advisor to the Assistant Secretary for Border and Transportation Security Policy. Effective December 9, 2003.

DMGS00160 Director of Transportation Security Policy for Border and Transportation Security to the Assistant Secretary for Border and Transportation Security Policy. Effective December 9, 2003.

DMGS00165 Deputy Chief of Staff for Operations to the Chief of Staff. Effective December 9, 2003.

DMGS00156 Plans and Operations Integration Officer to the Special Assistant. Effective December 11, 2003.

DMGS00167 Executive Assistant to the Under Secretary for Emergency Preparedness and Response. Effective December 11, 2003.

DMGS00169 Executive Assistant to the Director, Office of International Affairs. Effective December 11, 2003.

DMGS00177 Deputy White House Liaison to the White House Liaison. Effective December 12, 2003.

DMGS00158 Deputy Director of Communications for Emergency Preparedness and Response to the Assistant Secretary for Public Affairs. Effective December 17, 2003.

DMGS00168 Operations Assistant to the Special Assistant. Effective December 18, 2003.

DMGS00175 Logistics Coordinator to the Executive Director, Homeland Security Advisory Council. Effective December 18, 2003.

DMGS00121 Executive Assistant to the General Counsel. Effective December 19, 2003.

DMGS00178 Legislative Assistant to the Assistant Secretary for Legislative Affairs. Effective December 19, 2003.

DMGS00157 Business Liaison to the Special Assistant. Effective December 23, 2003.

DMGS00163 Director of Cargo and Trade Policy for Border and Transportation Security to the Assistant Secretary for Border and Transportation Security Policy. Effective December 23, 2003.

DMGS00164 Special Assistant to the Under Secretary for Information Analysis and Infrastructure Protection. Effective December 24, 2003.

DMGS00182 Executive Assistant to the Chief of Staff. Effective December 31, 2003.

Section 213.3312 Department of the Interior

DIGS01589 Director of Communications to the Executive Director, Take Pride in America. Effective December 2, 2003.

Section 213.3313 Department of Agriculture

DAGS00202 Special Assistant to the Under Secretary for Rural Development. Effective December 12, 2003.

DAGS60386 Special Assistant to the Administrator. Effective December 12, 2003.

DAGS00200 Special Assistant to the Secretary. Effective December 19, 2003.

DAGS00500 Special Assistant to the Chief of Staff. Effective December 31, 2003.

Section 213.3314 Department of Commerce

DCGS00623 Special Assistant to the Assistant Secretary for Market Access and Compliance. Effective December 2, 2003.

DCGS00395 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services. Effective December 11, 2003.

DCGS00514 Policy Advisor to the Assistant Secretary for Export Enforcement. Effective December 15, 2003.

DCGS00539 Special Assistant to the Director, Executive Secretariat. Effective December 17, 2003.

DCGS00610 Chief of Staff to the Under Secretary for International Trade. Effective December 17, 2003.

DCGS00181 Senior Advisor to the Assistant Secretary for Telecommunications and Information. Effective December 22, 2003.

DCGS00290 Special Assistant to the Director, Office of Business Liaison. Effective December 22, 2003.

DCGS00640 Speechwriter to the Director of Public Affairs. Effective December 22, 2003.

DCGS00651 Public Affairs Specialist to the Director of Public Affairs. Effective December 22, 2003.

Section 213.3315 Department of Labor

DLGS60201 Special Assistant to the Secretary of Labor. Effective December 2, 2003.

DLGS60168 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 3, 2003.

DLGS60196 Special Assistant to the Assistant Secretary for Veterans Employment and Training. Effective December 3, 2003.

DLGS60252 Special Assistant to the Director, 21st Century Workforce. Effective December 5, 2003.

DLGS60122 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 18, 2003.

DLGS60131 Special Assistant to the Assistant Secretary for Employment and Training. Effective December 19, 2003.

DLGS60118 Staff Assistant to the Secretary of Labor. Effective December 29, 2003.

DLGS60172 Special Assistant to the Director, Office of Faith Based and Community Initiatives. Effective December 29, 2003.

DLGS60277 Special Assistant to the Assistant Secretary for Administration and Management. Effective December 29, 2003.

Section 213.3316 Department of Health and Human Services

DHGS00666 Deputy Director for Intergovernmental Affairs (Operations) to the Director of Intergovernmental Affairs. Effective December 22, 2003.

DHGS60412 Regional Director, San Francisco, California, Region IX to the Director of Intergovernmental Affairs. Effective December 22, 2003.

Section 213.3317 Department of Education

DBGS60037 Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective December 9, 2003.

DBGS00301 Deputy Assistant Secretary for Regional Services to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective December 11, 2003.

DBGS00303 Director, White House Initiative on Hispanic Education to the Chief of Staff. Effective December 17, 2003.

Section 213.3328 Broadcasting Board of Governors

IBGS00015 Senior Advisor to the Director. Effective December 18, 2003.

Section 213.3330 Securities and Exchange Commission

SEOT60033 Legislative Affairs Specialist to the Director of Legislative Affairs. Effective December 2, 2003.

Section 213.3331 Department of Energy

DEGS00381 Public Affairs Specialist to the Deputy Administrator for Defense Programs, National Nuclear Security Administration. Effective December 5, 2003.

DEGS00391 Policy Advisor to the Assistant Secretary for Fossil Energy. Effective December 17, 2003.

DEGS00338 Deputy White House Liaison and Assistant to the Chief of Staff reporting to the Deputy Chief of Staff/White House Liaison. Effective December 23, 2003.

DEGS00385 Senior Policy Advisor to the Director, Public Affairs. Effective December 23, 2003.

DEGS00387 Trip Coordinator to the Director, Office of Scheduling and Advance. Effective December 23, 2003.

Section 213.3331 Federal Energy Regulatory Commission

DRGS51517 Policy Adviser to a Member of the Commission. Effective December 19, 2003.

Section 213.3332 Small Business Administration

SBGS60533 Associate Administrator for Strategic Alliances to the Administrator. Effective December 11, 2003.

SBGS60151 Director of External Affairs to the Special Assistant (Scheduling). Effective December 22, 2003.

SBGS60199 Senior Advisor for Policy and Planning to the Administrator. Effective December 24, 2003.

Section 213.3337 General Services Administration

GSGS00087 Special Assistant to the Regional Administrator, (Region IX-San Francisco). Effective December 19, 2003.

Section 213.3355 Social Security Administration

SZGS00011 Special Assistant to the Deputy Commissioner of Social Security. Effective December 17, 2003.

Section 213.3376 Appalachian Regional Commission

APGS00004 Confidential Policy Advisor to the Federal Co-Chairman. Effective December 4, 2003.

Section 213.3379 Commodity Futures Trading Commission

CTGS60006 Administrative Assistant to a Commissioner. Effective December 23, 2003.

Section 213.3384 Department of Housing and Urban Development

DUGS60037 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 22, 2003.

Authority: 5 U.S.C. 3301 and 3302; E.O.–10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–2150 Filed 2–3–04; 8:45 am]

BILLING CODE 6325–38–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3564]

State of Ohio

As a result of the President's major disaster declaration on January 26, 2004, I find that Franklin, Jefferson, Licking, Morgan, Ross, Tuscarawas and Washington Counties in the State of Ohio constitute a disaster area due to damages caused by severe storms, flooding, mudslides, and landslides

occurring on January 3, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 26, 2004 and for economic injury until the close of business on October 26, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Athens, Belmont, Carroll, Columbiana, Coshocton, Delaware, Fairfield, Fayette, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Knox, Madison, Monroe, Muskingum, Noble, Perry, Pickaway, Pike, Stark, Union and Vinton in the State of Ohio; and Brook, Hancock, Ohio, Pleasants, Tyler and Wood counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	6.123
Businesses and non-profit organizations without credit available elsewhere	3.061
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.061

The number assigned to this disaster for physical damage is 356406. For economic injury the number is 9Z2300 for Ohio; and 9Z2400 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 28, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–2228 Filed 2–3–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application Statement for Child's Insurance Benefits—20 CFR 404.350–.368, 404.603, and 416.350—0960–0010.* Title II of the Social Security Act provides for payment of monthly benefits to the children of an insured retired, disabled, or deceased worker, if certain conditions are met. The form SSA–4–BK is used by SSA to collect information needed to determine whether the child or children are entitled to benefits. The respondents are children of the worker or individuals who complete this form on their behalf.

Type of Request: Extension of an OMB-approved information collection.

	Life claims	Death claims
Number of Respondents.	925,000	815,000.
Frequency of Response.	1	1.
Average Burden Per Response.	10.5 minutes	15.5 minutes.
Estimated Annual Burden.	161,875 hours.	210,542 hours.

2. *Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—20 CFR 404.2015 and 416.615—0960–0024.* SSA uses the information collected on form SSA–787 to determine an individual's capability, or lack thereof, to handle his or her own benefits. This information also provides SSA with a means of selecting a representative payee, if this proves necessary. The respondents are beneficiaries' physicians.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,000 hours.

3. *Physical Residual Functional Capacity Assessment and Mental Residual Functional Capacity Assessment—20 CFR 404.1545 and 416.945—0960–0431.* The information collected by form SSA–4734 is used in the adjudication of disability claims involving physical and/or mental impairments. The form provides the State Disability Determination Service (DDS) with a standardized data collection format to evaluate impairment(s) and to present findings in a clear, concise, and consistent manner. The respondents are State DDSs administering Title II and Title XVI disability programs.

Type of Request: Extension of an OMB-approved information collection.

	SSA–4734–BK	SSA–4734–SUP
Number of Respondents.	1,625,095	796,770.
Frequency of Response.	1	1.
Average Burden Per Response.	20 minutes	20 minutes.
Estimated Annual Burden.	541,698 hours.	265,590 hours.

4. *Social Security Benefits Applications—20 CFR Subpart D,*

404.310–404.311 and 20 CFR Subpart F, 404.601–401.603—0960–0618. One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. In addition to the traditional paper application, SSA has developed various options for the public to add convenience and operational efficiency to the application process. The total estimated number of respondents to all application collections formats is 3,843,369 with a cumulative total of 995,457 burden hours. The respondents are applicants for RIB, DIB, and/or spouses' benefits.

Please note that burden hours for applications taken through the Modernized Claims System (MCS) are accounted for in the hardcopy collection formats. MCS is an electronic collection method that mirrors the hardcopy application formats. Guided by the MCS collection screens, an SSA representative interviews the applicant and inputs the information directly into SSA's application database. MCS offers the representative prompts based on the type of application being filed and the circumstances of the applicant. These prompts facilitate a more complete initial application, saving both the agency and applicant time. MCS also propagates identity and similar information within the application, which saves additional time.

Type of Request: Revision of an OMB-approved information collection (ISBA collection only).

Internet Social Security Benefits Application (ISBA)

ISBA, which is available through SSA's Internet site, is one method that an individual can choose to file an application for benefits. Individuals can use ISBA to apply for retirement insurance benefits (RIB), disability insurance benefits (DIB) and spouse's insurance benefits based on age. SSA gathers only information relevant to the individual applicant's circumstances and will use the information collected by ISBA to entitle individuals to RIB, DIB, and/or spouses' benefits. The respondents are applicants for RIB, DIB, and/or spouses benefits.

Number of Respondents: 169,000.

Frequency of Response: 1.

Average Burden Per Response: 21.4 minutes.

Estimated Annual Burden: 60,277 hours.

Paper Application Forms

Application for Retirement Insurance Benefits (SSA–1)

The SSA–1 is used by SSA to determine an individual's entitlement to retirement insurance benefits. In order to receive Social Security retirement insurance benefits, an individual must file an application with the SSA. The SSA–1 is one application that the Commissioner of Social Security prescribes to meet this requirement. The information that SSA collects will be used to determine entitlement to retirement benefits. The respondents are individuals who choose to apply for Social Security retirement insurance.

Number of Respondents: 1,460,692.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 255,621 hours.

Application for Wife's or Husband's Insurance Benefits (SSA–2)

SSA uses the information collected on Form SSA–2 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or husband's benefits, including those who are divorced.

Number of Respondents: 700,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 175,000 hours.

Application for Disability Insurance Benefits (SSA–16)

Form SSA–16–F6 obtains the information necessary to determine whether the provisions of the Act have been satisfied with respect to an applicant for disability benefits, and detects whether the applicant has dependents who would qualify for benefits on his or her earnings record. The information collected on form SSA–16 helps to determine eligibility for Social Security disability benefits. The respondents are applicants for Social Security disability benefits.

Number of Respondents: 1,513,677.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 504,559 hours.

5. *Youth Transition Process Demonstration Evaluation Data Collection—0960–NEW.* To further the President's New Freedom Initiative goal of increasing employment for individuals with disabilities, SSA plans to award seven cooperative agreements for the purpose of developing service delivery systems to assist youth with disabilities to successfully transition from school to work. SSA is funding two coordinated contracts to provide (1) technical assistance and (2) an evaluation. SSA will work with the Evaluation Contractor to use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions, impacts, and benefits of the demonstration. Evaluation data will be used by the projects to improve the efficiency of the project's operations; use of staff; linkages between the project and the agencies through which comprehensive services are arranged; and specific aspects of service delivery to better meet the needs of the targeted population. This type of project is authorized by sections 1110 and 234 of the Social Security Act. The respondents will be youth with disabilities who have enrolled in this project.

Type of Request: New information collection.

Number of Respondents: 5,000.

Frequency of Response: 4.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 5,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Certificate of Support—20 CFR 404.408a, 44.370, and 404.750—0960–0001.* The information collected by form SSA–760–F4 is used to determine whether a deceased worker provided the one-half support required for entitlement to parent's or spouse's Social Security benefits. The information will also be used to determine whether the Government pension offset would apply to the applicant's benefit payments. The respondents are parents of deceased workers or spouses who may be subject to the Government pension offset.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 4,500 hours.

2. *Notice Regarding Substitution of Party Upon Death of Claimant—20 CFR 404.957(c)(4) and 416.1457(c)(4)—0960–0288.* When a claimant for Social Security or Supplemental Security Income benefits dies while a request for a hearing is pending, the hearing will be dismissed unless an eligible individual makes a written request to SSA showing that he or she would be adversely affected by the dismissal of the deceased's claim. An individual may satisfy this requirement by completing an HA–539. SSA uses the information collected to document the individual's request to be made a substitute party for a deceased claimant, and to make a decision on whom, if anyone, should become a substitute party for the deceased. The respondents are individuals requesting hearings on behalf of deceased claimants for Social Security benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10,548.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 879 hours.

3. *Benefits Planning, Assistance, and Outreach (BPAO) Program—0960–0629.*

Background

SSA awarded cooperative agreements to establish community-based benefits planning, assistance, and outreach projects in every State and U.S. Territory, as it is authorized to do under Section 1149 of the Social Security Act. Potential awardees were State and local governments, public and private organizations, and nonprofit and for-profit organizations. SSA intended to establish as many projects as needed to ensure state-wide coverage for all Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries nationally. The projects funded under this cooperative agreement program are part of SSA's strategy to increase the number of beneficiaries who return to work and achieve self-sufficiency as the result of delivering direct services to them. The overall goal of the program is to disseminate accurate information concerning work incentives programs and issues related to youth programs to beneficiaries with disabilities (including transition-to-work aged youth), in order to enable them to make informed choices about work.

Collection Activities

The BPAO project collects identifying information from the project sites and benefits specialists. In addition, data are collected from the beneficiaries on background, employment, training, benefits, and work incentives. We use the information to manage the program, with particular emphasis on contract administration, budgeting, and training. In addition, SSA uses the information to evaluate the efficacy of the program and to ensure that those dollars appropriated for BPAO services are being spent on SSA beneficiaries. The project data will be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs.

Type of Request: Extension of an OMB-approved information collection.

Title of collection	Number of annual responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Site	147	1	1.8	4.4
Specialist	422	1	1.8	12.6
Beneficiary	60,000	1	5.3	5,300
Total	60,569			5,138

Total burden hours for this request: 5,317 hours.

4. *Information Collections conducted by State Disability Determination Services (DDS) on Behalf of SSA—20 CFR, Subpart P, 404.1503a, 404.1512, 404.1513, 404.1514 404.1517, 404.1519; 20 CFR Subpart Q, 404.1613, 404.1614, 404.1624; 20 CFR Subpart I, 416.903a, 416.912, 416.913, 416.914, 416.917, 416.919 and 20 CFR Subpart J, 416.1013, 416.1024, 416.1014—0960–0555.* The State DDS's collect certain information to administer SSA's disability program. The information collected is as follows: (1) Medial evidence of record (MER)—DDS's use MER information to determine a person's physical and/or mental status prior to making a disability determination; (2) consultative exam (CE) medical evidence—DDS's use CE medical evidence to make disability determinations when the claimant's own medical sources cannot or will not provide the information; (3) CE claimant forms—The DDS's request that claimants complete an authorization form for the release of consultative exam information to a personal physician and to complete an appointment form to confirm scheduled CE appointments; (4) CE provider information—DDS's use the CE provider information to verify medical providers' credentials and licenses before hiring them to conduct CEs; and (5) pain information—this information is used by the DDS's to assess the effects of symptoms on functioning for determining disability. The respondents are medical providers, other sources of MER and disability claimants.

Type of Request: Revision of an OMB-approved information collection.

(1) MER (Respondents—Medical Providers and Other Sources)

Number of Responses: 6,665,907.

Frequency of Response: Unknown.

Average Burden Per Response: 15 minutes.

Estimate Annual Burden: 1,666,477.

(2) CE Medical Evidence (Respondents—Medical Providers)

Number of Responses: 1,737,152.

Frequency of Response: Unknown.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 868,576 hours.

(3) CE Forms (Respondents-Claimants)

	Appointment form	Medical release
Number of respondents.	868,576	1,737,152.
Frequency of response.	1	1.
Average burden per response.	5	5.
Estimated annual burden.	72,381 hours	144,763 hours.

(4) CE Providers (Respondents—Medical Providers)

Number of Responses: 3,000.

Frequency of Response: 1.

Average Burden: 20 minutes.

Estimated Annual Burden: 1,000 hours.

(5) Pain Forms (Respondents—Claimants)

Number of Responses: 1,000,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250,000 hours.

5. *International Direct Deposit—31 CFR 210—0960–NEW.* SSA uses the information collected on the International Direct Deposit (IDD) Form, form SSA–1199 (Country), to enroll beneficiaries residing abroad in the IDD program. There are currently 39 countries where IDD is now available, and SSA plans to expand this service to other countries as it becomes available. The SSA–1199 (Country) is named according to the country for its intended use, but will always request the same basic enrollment information. This form is a variation of the SF–1199 A, Direct Deposit Sign-Up Form, which is used to enroll a beneficiary in direct deposit to a U.S. financial institution. The respondents are beneficiaries living in a foreign country who request Direct Deposit to a financial institution in their country of residence.

Type of Request: New information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 417 hours.

Dated: January 28, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–2215 Filed 2–3–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Secretarial Extension of Authority; Marine War Risk Insurance Under Title XII of the Merchant Marine Act, 1936

On December 12, 2001, President George W. Bush approved the provision of vessel war risk insurance by memorandum for the Secretary of State and the Secretary of Transportation. The approval was for the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargoes and crew) entering the Middle East region against loss or damage by war risks in the manner and to the extent approved in Title XII of the Merchant Marine Act, 1936 as amended (Act), 46 U.S.C App. 1281, *et seq.*

The President delegated to the Secretary of Transportation the authority vested in him by section 1202 of the Act, to approve the provision of insurance or reinsurance after the expiration of 6 months and to bring this approval to the attention of all operators and to arrange for its publication in the **Federal Register.**

On January 13, 2004 the Secretary of Transportation approved the extension of the authority to provide such insurance for a 1 year period, beginning December 13, 2003.

Dated: January 29, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 04–2275 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34438]

Huron & Eastern Railway Company, Inc.—Acquisition and Operation Exemption—Central Michigan Railway Company

Huron & Eastern Railway Company, Inc. (HESR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the Central Michigan Railway Company (CMRY) and operate approximately 99.87 miles of rail line, as follows: (1) The Midland Sub, between milepost 0.0 and milepost 15.0; (2) between Durand, MI (milepost 0.0) and Wheeler, MI (milepost 3.5); (3) between Genesee, MI (milepost 101.3) and Paines, MI (milepost 96.0); (4) between Interstate Highway 75 (milepost 17.21) and CSX Yard (milepost 18.07); (5) between Durand (milepost 69.2) and M21 (milepost 80.8); (6) the Anderson Lead, between milepost 79.2 and milepost 81.4; (7) the Owosso Industrial Track, between milepost 80.1 and milepost 0.7; (8) between Marquette, MI (milepost 0.0) and Prairie, MI (milepost 1.7); (9) between Essexville CMR Bridge (milepost 0.0) and Pine Street (milepost 2.87); (10) between Wheeler (milepost 3.5) and MDOT ownership (milepost 5.0); and (11) the HECLA Belt line between the east line of Patterson Street in West Bay City, MI (milepost 1.9) and the end of the line (milepost 2.8).[1]

HESR is also acquiring the right to operate over the Bay City Yard Line[2] between the south end of North Bay City Yard (milepost 55.77) and the north end of North Bay City Yard at the Centerline of Bangor Road (milepost 2.62).[3]

Additionally, HESR is acquiring approximately 16.55 miles of incidental trackage rights as follows: (1) Over Grand Trunk Western Railroad Company, (a) over the Saginaw Subdivision, between milepost 0.00 and milepost 0.60, (b) over the Holly-Grand Rapids Subdivision, between milepost 65.50 and milepost 69.00,[4] and (c) over the Flint Subdivision, between milepost 253.0 and milepost 255.4; (2) over D&M, a distance of approximately 5.75 miles from D&M's junction with CMRY near Total Refinery in Bay City, MI, north to a point near milepost 3.4 and the Kawkawlin River in Kawkawlin, MI;[5] (3) over CSX Transportation, Inc. (CSXT) for overhead trackage rights over approximately 2.9 miles of rail line owned by CSXT, from milepost BBO 7 at or near the Mershon Switch east to milepost CB 1 near the Saginaw Yard (a distance of approximately 1.7 miles), then from milepost CB 1 southeast to milepost CC 2.2, at or near the Hoyt Diamond (a distance of approximately 1.2 miles), at which point HESR would connect with the former CMRY main line;[6] and (4) over CSXT for about 4.0 miles in Saginaw, MI, from the clearance point at the intersection of the CMRY/CSXT connection track of the Grand Rapids Wye Track, through CSXT's Saginaw main, yard, and connection trackage to CSXT's ownership point at the connection with HESR at Saginaw (milepost CBB 2.0) on CSXT's Bad Axe Subdivision.[7]

Finally, HESR is accepting assignment of trackage rights over lines of CMRY

[1] An amendment was filed on January 6, 2004, reflecting the correct length of the HECLA Belt line.

[2] The Bay City Yard Line is owned by the Detroit & Mackinac Railway Company (D&M), an affiliate of CMRY. Lake State Railway Company (Lake State) has an easement to operate over, and CMRY has operating rights over and through, the Bay City Yard Line. HESR will acquire CMRY's right to operate over the Bay City Yard Line, but D&M will remain the owner of the real property and Lake State will retain its easement.

[3] This is the entire rail trackage of CMRY, except for a 1.77-mile segment that was approved for abandonment in *Central Michigan Railway Company-Abandonment Exemption—in Saginaw County, MI,* STB Docket No. AB–308 (Sub-No. 3X) (STB served Oct. 31, 2003).

[4] *See Central Michigan Railway Company—Acquisition and Operation Exemption—Certain Lines of Grand Trunk Western Railroad Company,* ICC Finance Docket No. 31059 (ICC served July 13, 1987).

[5] *See Central Michigan Railway Company—Trackage Rights Exemption—Detroit & Mackinac Railway Company,* ICC Finance Docket No. 32404 (ICC served Dec. 14, 1993).

[6] *See Central Michigan Railway Company and CSX Transportation, Inc.—Joint Relocation Project Exemption—in Saginaw, MI,* STB Finance Docket No. 34021 (STB served May 17, 2001).

[7] *See Central Michigan Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.,* STB Finance Docket No. 34241 (STB served Aug. 29, 2002).

that have been granted to CSXT,[8] Lake State,[9] Tuscola and Saginaw Bay Railway Company,[10] and any other agreed upon trackage rights that have been approved or exempted.[11]

HESR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

Because the projected revenues of the rail lines to be operated will exceed $5 million, HESR has certified to the Board that the required notice of its acquisition and operation was posted at the workplace of the employees on the affected lines, and a copy of the notice was served on the national offices of the labor unions of the employees on the affected lines on November 26, 2003. *See* 49 CFR 1150.42(e). The earliest the transaction could have been consummated was January 25, 2004, the effective date of the exemption (60 days after HESR's November 26, 2003 certification to the Board).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34438, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: January 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–2128 Filed 2–3–04; 8:45 am]

BILLING CODE 4915–00–P

[8] *See CSX Transportation, Inc.—Trackage Rights—Grand Trunk Western Railroad Company*, ICC Finance Docket No. 31114 (ICC served Sept. 29, 1987).

[9] *See Lake State Railway Company—Trackage Rights Exemption—Central Michigan Railway Company*, ICC Finance Docket No. 32018 (ICC served Feb. 27, 1992).

[10] *See Tuscola and Saginaw Bay Railway Company—Acquisition and Operation Exemption—Grand Trunk Western Railroad Incorporated and Central Michigan Railway Company*, STB Finance Docket No. 33822 (STB served Apr. 12, 2000).

[11] On December 3, 2003, Lake State, a Class III rail carrier, filed a letter expressing concerns regarding the proposed transaction. Lake State explained that it was concerned with the potential impact of the transaction because its own viability depends upon the use of trackage rights over a five-mile portion of CMRY's rail line in North Bay City, MI, and because of certain market power issues related to the dominant position already held by HESR's parent, RailAmerica, Inc. However, by letter filed on January 8, 2004, Lake State informed the Board that the concerns raised in its December 3 letter have been resolved and that the letter should be regarded as withdrawn.

On December 22, 2003, correspondence was received from U.S. Congressman Bart Stupak of Michigan supporting consideration of the interests of customers who currently use the services of CMRY, and urging that current rates and routing agreements, as well as other current operating conditions, be considered and maintained to help ensure the continued economic viability of the businesses and industries in Michigan.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–CS

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720–CS, Carrier Summary Report.

DATES: Written comments should be received on or before April 5, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Carrier Summary Report.

OMB Number: 1545–1733.

Form Number: 720–CS.

Abstract: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–CS is an information return that will be used by carriers to report their monthly deliveries and receipts of products to and from terminals.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 475.

Estimated Time Per Respondent: 385 hours, 19 minutes.

Estimated Total Annual Burden Hours: 183,027.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2298 Filed 2–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–TO

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720–TO, Terminal Operator Report.

DATES: Written comments should be received on or before April 5, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Terminal Operator Report.

OMB Number: 1545–1734.

Form Number: 720–TO.

Abstract: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–TO is an information return that will be used by terminal operators to report their monthly receipts and disbursements of products

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 1,564 hours, 41 minutes.

Estimated Total Annual Burden Hours: 2,347,020.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2299 Filed 2–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 2, 2004, from 3 p.m. EST to 4:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, March 2, 2004, from 3 p.m. EST to 4:30 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Dated: January 30, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–2300 Filed 2–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Tuesday, March 2, 2004 from 9 a.m. Pacific Time to 10 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: January 30, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–2301 Filed 2–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

DATES: The meeting will be held Monday, March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, March 1, 2004 from 8 a.m. Pacific Time to 9 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174.

The agenda will include the following: Various IRS issues.

Dated: January 30, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–2302 Filed 2–3–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
February 4, 2004

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 135, and 145
Special Federal Aviation Regulation No. 36, Development of Major Repair Data; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

[Docket No.: FAA–2003–16527; Amendment No. SFAR 36–8]

RIN 2120–AI09

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The FAA is confirming the effective date of a previously published direct final rule concerning development of major repair data. Under the FAA's direct final rule procedure, when we receive no adverse comment, we publish a notice in the **Federal Register** confirming the effective date of the final rule. This action advises the public that the FAA received no adverse comments on the direct final rule concerning development of major repair data and confirms that the effective date of the rule is January 23, 2004.

DATES: The amendment SFAR 36–8 became effective January 23, 2004.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–9681, *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION: On November 19, 2003, the FAA published a direct final rule entitled, Special Federal Aviation Regulation (SFAR) No. 36, Development of Major Repair Data (68 FR 65376). The rule extended the SFAR 36 expiration date five years to January 23, 2009. Also, in the rule, the FAA made a technical amendment to Section No. 4 (Application) of SFAR 36 to accurately indicate the FAA Certificate Holding District Office charged with the overall inspection of the applicant's operations under its certificate as the appropriate FAA office to which applications should be submitted.

SFAR 36 allows holders of authorized repair station or aircraft operating certificates to approve aircraft products or articles for return to service after completing major repairs using self-developed repair data not directly approved by the FAA. Extension of the regulation continues to provide, for those who qualify, an alternative to gaining direct FAA approval of major repair data on a case-by-case basis. The FAA invited comments to the rule. The comment period closed on December 19, 2003. The rule became effective January 23, 2004.

Under the FAA's rulemaking procedures (found at 14 CFR 11.31), a direct final rule takes effect on a specified date unless FAA receives an adverse comment or a notice of intent to file an adverse comment within the comment period. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. If we don't receive an adverse comment or a notice of intent, we will publish a confirmation document in the **Federal Register** telling the public the effective date of the rule. In this case, we received no adverse comments in response to the November 19, 2003, direct final rule. Therefore, we are confirming that the final rule became effective on January 23, 2004. This action does not preclude the FAA from taking any future course of action on this issue.

Issued in Washington, DC, on January 28, 2004.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 04–2221 Filed 2–3–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
February 4, 2004

Part III

Department of Homeland Security

Coast Guard

46 CFR Part 67

Department of Transportation

Maritime Administration

46 CFR Part 221

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Final Rule and Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[USCG–2001–8825]

RIN 1625–AA28 (Formerly RIN 2115–AG08)

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its regulations on the documentation of vessels engaged in the coastwise trade. These amendments respond to statutory changes that eliminate certain barriers for U.S.-vessel operators seeking foreign financing by lease. These amendments specify the information needed to determine the eligibility of a vessel financed in this manner for a coastwise endorsement. To address certain issues raised by the comments to this rulemaking but not proposed in this rulemaking, we are publishing a separate notice of proposed rulemaking found elsewhere in this issue of the **Federal Register**.

DATES: This final rule is effective on February 4, 2004, except for §§ 67.147 and 67.179, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the **Federal Register** announcing the effective date of those sections.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–8825 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Related Rulemaking

A separate, but related rulemaking entitled "Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking" (USCG–2003–14472, RIN 1625–AA63) appears elsewhere in this issue of the **Federal Register**. It concerns the question of whether we should prohibit or restrict the chartering back, whether by time charter, voyage charter, space charter, or contract of affreightment, of a lease-financed vessel to the vessel's owner, the parent of the owner, or a subsidiary or affiliate of the parent. If restrictions should be imposed, what criteria should be applied in charter-back situations?

Also, the separate rulemaking raises the question of whether we should seek the assistance of a third party with expertise in reviewing charters for compliance with the law, such as the Maritime Administration (MARAD) or an independent third party. (MARAD is currently reviewing its policy of general approval of time charters (67 FR 50406) and has agreed to consider this issue.)

In addition, the separate rulemaking will seek comments regarding the issue of providing a time limit for the grandfather provisions in § 67.20(b) through (e), which allows endorsements issued under the lease-financing provisions before the date of publication of this final rule to continue in effect (subject to certain specified exceptions).

Though these subjects were discussed in many of the comments received to the present rulemaking (USCG–2001–8825), we feel that we need additional public input specifically focused on these subjects and on our proposed changes in the separate rulemaking.

Regulatory History

On May 2, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Vessel Documentation: Lease-Financing for Vessels Engaged in the Coastwise Trade" in the **Federal Register** (66 FR 21902). On June 29, 2001, we published a notice extending the comment period from July 2, 2001, to September 4, 2001 (66 FR 34603). On December 14, 2001, we published a notice reopening the comment period until January 28, 2002, and announcing that we were contemplating publishing a supplemental notice of proposed rulemaking (SNPRM) (66 FR 64784). On August 9, 2002, we published an SNPRM with a comment period closing on October 8, 2002. We received over 100 letters commenting on the NPRM and SNPRM.

We received numerous requests for one or more public meetings. After considering these requests and the comments received, we decided that public meetings would not benefit this rulemaking project because of the depth and thoroughness of the comments and the tremendous help they provided. We believed that public meetings would not provide new information that would assist us in writing the final rule. In addition, public meetings would delay the issuance of a final rule, which is contrary to the expressed desire of many of the commenters. However, we do plan to hold a public meeting on the separate rulemaking discussed in the "Related Rulemaking" section of this preamble.

At the request of industry representatives, several *ex parte* meetings were held with senior Coast Guard officials. Memoranda of those meetings were entered into the docket. (*See* **ADDRESSES.**)

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Without regulations in place, many commenters contended that they would be uncertain of the Coast Guard's policy for processing applications during that 30-day period. Making these regulations effective as soon as possible relieves the burden of uncertainty on applicants.

Background and Purpose

In 1996, Congress amended the vessel documentation laws to promote lease financing of vessels engaged in the coastwise trade (section 1113(d) of Pub. L. 104–324, the Coast Guard Authorization Act of 1996; 46 U.S.C. 12106(e)) ("the 1996 Act"). Lease financing has become a very common way to finance capital assets in the maritime industry. Under lease financing, ownership of the vessel is in the name of the lessor, with a demise charter to the charterer of the vessel. (A "demise charter," also known as a "bareboat charter," is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it.) Many vessel operators choose to acquire or build vessels through lease financing, instead of the traditional mortgage financing, because of possible cost benefits. But, until the 1996 Act, operators were prevented from obtaining this financing from companies that are less than 75 percent U.S. owned because the leasing company had to be a U.S. citizen under section 2 of the Shipping Act, 1916, (46 U.S.C. app. 802), which requires at least 75 percent U.S. ownership. This

situation severely restricted the sources of available capital.

Under section 1113(d) of the 1996 Act, Congress eliminated this technical impediment to vessel financing by adding a new paragraph (e) to 46 U.S.C. 12106. Under 46 U.S.C. 12106(e), Congress authorized the Secretary of Transportation (since delegated to the Commandant of the Coast Guard) to issue coastwise endorsements if (1) the vessel is eligible for documentation; (2) the vessel's owner, the parent of the owner, or subsidiary of the parent of the owner is primarily engaged in leasing or other financing transactions; (3) the vessel is under a demise charter to a person certifying that the person is a U.S. citizen eligible to engage in coastwise trade under section 2 of the Shipping Act, 1916; and (4) the demise charter is for at least 3 years (or less under § 67.20(a)(11)).

According to the legislative history for the 1996 Act (*See* House Conference Report No. 104–854; Pub. L. 104–324; 1996 U.S. Code Congressional and Administrative News, p. 4323.) ("Conference Report"), Congress intended to broaden the sources of capital for owners of U.S. vessels engaged in the coastwise trade by creating new lease-financing options. At the same time, the Conference Report states that Congress did not intend to undermine the basic principle of U.S. maritime law that vessels operated in domestic trades must be built in shipyards in the United States and be operated and controlled by U.S. citizens, which is vital to U.S. military and economic security. In that report, Congress also directed the Coast Guard to establish the necessary regulations to administer 46 U.S.C. 12106(e), including the filing of demise charters for vessels issued a coastwise endorsement under that provision. We discuss our authority and need to resort to legislative history, of which the Conference Report is a part, in the section entitled "Interpreting the statute" under "General Comments" in this preamble.

List of Changes to the SNPRM

This is a list of the changes that we have made to the supplemental notice of proposed rulemaking (SNPRM) published on August 9, 2002. You may find an additional discussion of these changes in the "Discussion of Comments" section later in this preamble.

This rulemaking project proved to be somewhat unusual in the field of rulemaking, because most of the comments received dealt with conceptual approaches to interpreting the 1996 Act and the degree and direction of statutory implementation required, rather than with specific regulatory provisions. Therefore, in responding to comments in the manner we consider most appropriate and fair under the circumstances, we have incorporated changes in this final rule that, though not specifically requested by a comment, are in character with the original scheme as set forth in the NPRM and SNPRM and are a logical outgrowth of our proposals. Because of the lengthy comment periods, some 7½ months, and the issuance of an SNPRM before going to a final rule, we feel that we have provided a high degree of exposure for the issues at hand and an ample opportunity for the parties affected to develop evidence in the record.

A list of the changes, in order of their appearance in the regulatory text, follows:

1. The word "affiliate," as used in the new definition of the word "group" described below, is defined in § 67.3 to mean a "person" (defined to include a corporation, partnership, *etc.*, as well as an individual) that is less than 50 percent owned or controlled by another person. The intent is to include within the "group" not only the owner, parent of the owner, and "subsidiaries" (which are defined in § 67.3 as being at least 50 percent owned by another) of the parent, but also those persons (*i.e.*, affiliates) that are less than 50 percent owned or controlled by the parent. For example, we would include in the aggregate revenue test provisions in §§ 67.20(a)(2), 67.147(a)(1)(v), 67.167(c)(10)(iv), and 67.179(a)(1)(v) all entities in the "group," not just the owner, parent, and the parent's subsidiaries.

2. In § 67.3, the word "group" is defined. It replaces the phrase "the person that owns a vessel, the parent of that person, and all subsidiaries of the parent of that person," which was used many times throughout the SNPRM. In the definition of "group," we added "affiliates" of the parent. This definition of "group," as used in the Conference Report, contemplates today's business environment, where few corporate entities stand alone with no relationship to one another.

3. The term "operation or management of vessels" as used throughout §§ 67 20, 67.147, 67.167, and 67.179 is now defined in § 67.3. It is defined to include all activities related to the use of vessels to provide services. The definition is needed to identify those business activities of an entity or group that are relevant in determining whether a person may qualify as a vessel owner under 46 U.S.C. 12106(e). A broad definition of this term is consistent with Congressional intent and preserves the effectiveness of the control test and the majority of aggregate revenues test. The term does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from those investments. Thus, lease-financing activities and other purely financial investments are excluded. It also does not include businesses that provide services to vessels, such as fueling and ship chandling. A broad definition of the term "operation or management of vessels" to include any and all activities related to the use of vessels to provide services is supported by several comments and is a logical outgrowth of the discussion of this term in the NPRM and the SNPRM.

4. In § 67.3, we have added two new sentences in the definition of the word "parent" to make it clear that "parent" includes all parents in the owner's chain of ownership to the ultimate parent.

5. In § 67.3, the term "primarily engaged in leasing or other financing transactions" is re-defined to include only transactions that have a financing component and exclude transactions that only include "leasing." The law was enacted to promote "lease financing" not "leasing." The Conference Report, at page 130, states that the overall purpose of the lease-financing provisions is to eliminate technical impediments to using various techniques for financing vessels operating in the domestic trade. Thus, the clear intent of Congress was to create a vehicle for vessel financing, not an alternative means of vessel ownership. See the discussion of our responsibilities under the Jones Act in the "Interpreting the statute" section under "General Comments" in this preamble.

In 46 U.S.C. chapter 121, Congress entrusted the Coast Guard with the responsibility of administering the vessel-documentation laws consistently with the Jones Act, 46 U.S.C. app. 802 and 808 and 46 U.S.C. 12106. Accordingly, it is our responsibility to implement the lease-financing provisions in such a way as to be consistent with the Jones Act, with its prior effect on the documentation laws, and with the intent of Congress.

Furthermore, the Conference Report, at pages 131 and 132, states that banks, leasing companies, or other financial institutions qualify as owners. This statement evinces Congress's intent to prevent the statute from being used as a loophole to avoid coastwise

citizenship requirements. The purpose is to prevent the use of specially created "leasing-company" subsidiaries that merely take title to existing vessels, with no financing involved, for the sole purpose of leasing them. Thus, the acquisition of a vessel must have some element of financing involved. An intra-group, book-to-book transfer without any financing involved will not suffice.

6. A definition of the word "sub-charter" is added to § 67.3 to indicate that sub-charters include all types of charters and contracts for the use of the vessel subsidiary to a demise charter, including but not limited to those denominated as "demise charters," "time charters," "voyage charters," and other subordinate contracts, however denominated, for the use of the vessel. The purpose for this definition is to ensure that all charters and contracts for the use of the vessel are filed with the Coast Guard so that they may be made available for examination by the Coast Guard and third parties. This is necessary because sub-charters or contracts have the potential of giving a non-citizen an unacceptable amount of control over vessels operating in the coastwise trade. For example, simply styling a charter as a "time charter" or "voyage charter" does not ensure that the charter will not transfer an unacceptable amount of control from the demise charterer.

7. In §§ 67.20(a)(2), 67.147(a)(1)(viii), and 67.179(a)(1)(ix), we added the words "the vessel was financed with lease financing." These additional words help ensure that the acquisition of a vessel must have some element of financing involved. An intra-group, book-to-book transfer without any financing involved will not suffice.

8. Section 67.20(a)(5) is changed by adding, after the words "the person that owns the vessel," the words "the parent of the person that owns the vessel" and "group of which the person that owns the vessel is a member." This change also excludes, from qualifying for a coastwise endorsement under lease financing, ownership arrangements where the parent of the owner of the vessel and the group of which the owner is a member are primarily engaged in the direct operation or management of vessels.

As the Conference Report at page 131 notes, ownership must be primarily a financial investment in the vessel without the ability and intent to control the vessel's operations and that the operation of the vessel must not be by a person not primarily engaged in the direct operation or management of vessels. Taken together, these phrases suggest that a requirement that the owner, the parent of the owner, or the group of which the owner is a member must not be primarily engaged in the direct operation or management of vessels is a permissible restriction on who can qualify as a lease-financing owner. Therefore, for example, a foreign group that gets more than 50 percent of its revenue from the direct operation or management of vessels would be barred from setting up a U.S. subsidiary for the purpose of being an owner under lease financing.

9. In § 67.20(a)(6), the words "directly or indirectly" are added before the word "control." The words are added in recognition of the fact that vessels may also be controlled indirectly through devices such as side agreements between parties involved in the vessel's ownership and charter. Allowing indirect control of the vessels through side agreements or similar devices would be inconsistent with the purpose of the lease-financing provision. That provision was not intended to implicitly repeal the Jones Act protections afforded to a U.S. citizen eligible to engage in coastwise trade under section 2 of the Shipping Act, 1916 (section 2 citizen) any more than is necessary to further the goal of making more capital available for the owners of U.S. vessels.

10. The "aggregate revenues" test in §§ 67.20(a)(7), 67.147(a)(1)(v), 67.167(c)(10)(iv), and 67.179(a)(1)(v) for use in determining eligibility for a coastwise endorsement is changed from applying just to the group of which the owner is a member (*i.e.*, the vessel owner, the parent of the owner, and all subsidiaries of the parent). It now applies to each of the following taken separately: the owner, the owner's parent, and the owner's group. This permits foreign banks, lease-financing companies, or other financial institutions to qualify as owners of U.S.-flag vessels under lease financing even if they have vessel owning and operating subsidiaries or affiliates, but prevents qualification of companies in which the primary business of the owner, the owner's parent, or the group of which the owner is a member, is vessel ownership or operation.

11. In §§ 67.20(a)(8), 67.147(a)(1)(vi), 67.167(c)(10)(v), and 67.179(a)(1)(vi) concerning the operation or management of commercial, foreign-flag vessels, the word "group," as newly defined in § 67.3 with its inclusion of "affiliates" of the parent, replaces the words "the group that includes the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person." This test is extended to apply to the vessel owner and the owner's parent, as well as the group. Thus, we clarify that the lease-financing owner must have only a financial investment interest in the vessel and may not be involved in operating vessels. Additionally, because of the possibility for a foreign parent that is actually involved in the operation or management of foreign vessels to exercise "control" of the vessel's operations, we have included the words "parent of the owner" in this part of the test.

12. The grandfather provision in § 67.20(b) has one change. The date before which an endorsement must be issued to be eligible for the grandfather provision is changed from the effective date of this final rule to the date of publication of this rule, which is 30 days sooner. The purpose of the grandfather provision is to protect existing business arrangements. Changing the date by which vessels must be documented under this section from the effective date of the rule to the date of publication prevents the establishment of new business arrangements during that 30-day period that would be prohibited by this rule.

New paragraph (c) is added to provide a grandfather provision for newly constructed vessels built in reliance upon a letter ruling from the Coast Guard before the date of publication of this final rule.

Also, new paragraphs (d) and (e) are added to apply to barges that are not required to be documented under 46 U.S.C. 12110(b). These new paragraphs are similar to paragraphs (b) and (c) discussed above but are needed because the existing documentation regulations handle undocumented barges somewhat differently from other vessels.

13. In §§ 67.147(a)(1) and 67.179(a)(1) concerning the individual required to certify the certification submitted with an application, the term "officer" was used. As suggested by several comments, this term alone, which is based on the corporate model, does not accommodate the many different types of business entities that qualify as owners and the different titles by which individuals authorized to provide the certification are known. We expect the authorized individual to be on a level at least equivalent to an officer in a corporation, a partner in a partnership, or a member of the board of managers in a limited liability company. Therefore, these sections have been amended to address these differences.

14. One comment to § 67.147(a)(2) in the NPRM, on submitting a copy of the charter as part of an application for an endorsement, asked that we delete the requirement that the charter provide that the charterer is deemed to be the

owner *pro hac vice* for the term of the charter. It suggested that practitioners generally understand that a demise charter does convey to the charterer the full possession, control, and command of a vessel and that the provision is therefore surplusage.

We made the suggested deletion in the SNPRM. However, upon reconsideration, we have reinserted that provision in the final rule. It is clear from the legislative history that Congress intended the charterer to be the owner *pro hac vice* for the term of the charter. The fact that the words "*pro hac vice*" may not be reflective of common charter practice is added reason for their inclusion in any charter submitted under the lease-financing exception.

15. In §§ 67.147(d)(1) and 67.179(d)(1), changes are made that would lessen the paperwork burden. The SNPRM would require copies of sub-charters to be filed with the Director, National Vessel Documentation Center. In the final rule, we also require that amendments to sub-charters be similarly filed. However, we added that they both need to be filed only when requested to do so by the Director.

16. In §§ 67.147(d) and 67.179(d), the word "demise" is removed and the term "sub-charter" (as newly defined in § 67.3) is added. The word "demise" is eliminated because the Coast Guard believes that it is necessary to make all charter and other contractual arrangements for the use of the vessel available for examination by the public and for review by the Secretary as needed. This is necessary to ensure that an unacceptable amount of control over the vessel's operation is not transferred from the demise charterer in contravention of the requirement that the demise charterer be the owner *pro hac vice* during the charter period. Also, we have aligned §§ 67.147(d)(2) and 67.179(d)(2) with the above changes.

17. In §§ 67.147(e) and 67.179(e) concerning penalties for false certification, the words "and 18 U.S.C. 1001" are added following "subject to penalty under 46 U.S.C. 12122." We added the additional criminal provision concerning knowingly false or fraudulent statements to emphasize the importance of the accuracy of the certifications to the integrity of the Coast Guard's implementation of the lease-financing law.

Discussion of the Comments

In this section, we discuss the comments both to the NPRM and SNPRM. They are grouped into two parts: "General Comments" and "Comments to Specific Sections." The "General Comments" section addresses comments, such as comments on interpreting the 1996 Act, that are not specific to a particular proposed provision. The section on "Comments to Specific Sections" is organized in numerical order by regulatory section.

Many of the comments to the NPRM were rendered moot by changes in the SNPRM. We limited discussion of them in the preamble to avoid confusing the reader.

Certain provisions in the NPRM and SNPRM were repeated, almost verbatim, in several sections throughout the proposed rule. For example, in the NPRM, the aggregate revenue provision in § 67.20(a)(4) (eligibility for endorsement) is also found in §§ 67.147(a)(1)(iv) (applications for vessels), 67.167(c)(1)(iv) (exchange of certificates), and 67.179(a)(1)(iv) (applications for barges) of the NPRM. We found that comments to one section were generally applicable to other, similar sections.

Comments submitted to this rulemaking, but that now relate to the subjects addressed in the separate rulemaking referenced in the "Related Rulemaking" section of this preamble, such as concerns over the potential abuse of the chartering element in the lease-financing provisions, have also been considered under that separate rulemaking.

I. General Comments

1. *Interpreting the statute.* (a) Virtually all of the commmenters fall, in varying degrees, within two broad groups. One group argues for a literal application of the statute. They urge that the statute is not ambiguous. They contend that the Coast Guard's proposals in the NPRM and SNPRM are based on an erroneous interpretation of the statute and amount to legislating that goes far beyond permissible implementation. According to these comments, no resort to the legislative history is permissible in implementing the statute. They urge that Congress's intention as expressed by the plain language of the statute will be frustrated unless the Coast Guard's regulations are limited to the literal requirements in the statute. These comments argue that the statute, by vesting control of the vessel in the demise charterer, which must be a section-2 citizen under 46 U.S.C. app. 802, Congress provided sufficient protection of the Jones Act principles.

We disagree. Primarily as a result of 6 years of experience with the law, we believe the result of such a literal interpretation could eviscerate the principles that Congress enunciated in the cabotage restrictions contained in the Jones Act and might even effectuate an implicit repeal of that statute. The Jones Act principles referred to here include the cabotage principles embodied in 46 U.S.C. app. 883 (the Jones Act), 46 U.S.C. app. 802, and 46 U.S.C. 12106.

The second broad group of commenters recognize that the lease-financing law opened the Jones Act trade to lease-financing companies, but argue for a narrow application of the statute. According to these comments, the lease-financing law was intended to be a narrow exception to the Jones Act; it was not intended to repeal that Act. They argue that the lease-financing law should be read very narrowly so as to protect those traditionally engaged in the Jones Act trade. They rely on statements in the Conference Report, as well as on the principle that implicit repeal of statutes is not favored. According to them, the only proper interpretation is to apply the lease-financing law with a view toward opening the Jones Act to foreign owners only to the extent necessary to ensure that those persons who have relied on it in structuring their business models are not subject to undue foreign competition. The term "foreign owners," as used here, means persons who qualify to own a U.S. vessel, but are not eligible to engage in the coastwise trade.

As stated above, we do not agree that the statute should be applied so literally that the result would be a wholesale, yet implicit, repeal of the Jones Act protections for domestic shipping. Because of the rich history of the Jones Act, the protections it has traditionally extended to American citizens, and the lack of any indication in either the statute or the legislative history in favor of an intended repeal of the Jones Act, we reject the conclusion of those who construe the law so as to accomplish such a repeal. Instead, we conclude that the lease-financing provisions were intended to accomplish a narrow relaxation of the restrictions formerly applicable to owners who desired to engage in lease financing, as opposed to mortgage financing, of vessels. Furthermore, we believe that, when implementing the statute through regulations, as Congress directed us to do, Congress sought to apply the lease-financing provisions as consistently as possible with the existing provisions of the Jones Act. Otherwise, there would have been no need for the Conference Report to state on page 130 that it was the Conferees' intention not to undermine a basic principle of U.S. maritime law that vessels operated in

domestic trades must be operated and controlled by American (*i.e.*, section-2) citizens, which is vital to United States military and economic security.

Congress entrusted the Coast Guard with the responsibility, under 46 U.S.C. chapter 121, to administer the vessel documentation laws consistently with the Jones Act, 46 U.S.C. app. 802, 808, and 883 and 46 U.S.C. 12106. The Coast Guard has had this role continuously since 1967. We have historically implemented the vessel-documentation law with due regard to the important cabotage principles embodied in the Jones Act. We have endeavored in the past, as we do now, to carry out the cabotage principles that are the essence of the Jones Act as expressed by Congress in the Act itself and its legislative history, as well as in the lease-financing amendment and its legislative history.

Thus, we have relied on the legislative history of not only the lease-financing law, but also of the Jones Act itself. In that regard, we are aware of the Congressional purpose of that Act, as explained on the floor of the House at the time of discussions on who could be a U.S. citizen for purposes of owning and operating a vessel in the U.S. coastwise trade. That purpose was expressed by Congressman Saunders, as follows:

> The amendment [to section 2 of the Shipping Act] intends to make it impossible for any arrangement to be effected by which such a corporation, partnership or association shall be a citizen of the United States when the real control of same is in the hands of aliens. We have sought to make the language so sweeping and comprehensive that no lawyer, however ingenious, would be able to work out any device under this section to keep the letter, while breaking the spirit of the law. See 56 Cong. Rec. 8029 (June 19, 1918).

Congress required the Secretary of Transportation to implement the lease-financing law with regulations. Consistent with prior practice since 1967, that responsibility has been delegated to us. We believe that in order to carry out Congress's intent in implementing the lease-financing law, we must be mindful of all legitimate sources from which that intent may be gleaned. In fact, for us to ignore the Jones Act or its rich history would be contrary to our responsibility.

On the other hand, we recognize that the principal purpose of the lease-financing provisions is to increase the sources of capital.

(b) In determining whether the statute should be applied literally, it is clear that some of the statute's critical terms are not self-defining. For example, the term "primarily engaged in leasing or other financing transactions" is not clear. It is not clear on its face whether the clause "primarily engaged" means that the entity so engaged derives a majority of its revenue from that activity; that the entity devotes a majority of its resources to that activity; or, in the case of multiple entities in a group (which is probably typical), that one of those entities derives more revenue or devotes more resources than any of the others, but not necessarily a majority of the group's revenue or resources.

Similarly, it is not clear on the face of the statute whether Congress intended to authorize special-purpose leasing companies engaged in leasing vessels only to qualify if they have no financing component to the transaction or whether it intended financing to be an essential component of that activity (as we provide in this final rule). Therefore, a resort to the legislative history, particularly the Conference Report, to interpret the ambiguous terms of the statute is appropriate to determine the intent of Congress as to who may qualify for this newly created, lease-financing exception to the Jones Act and how the Coast Guard should implement the statute.

We note that the Conference Report does not answer all the questions that must be answered in order to implement the statutory language. For example, while both the statute and the Conference Report are clear that control of the vessel receiving a coastwise endorsement must be placed in a U.S. citizen, the statute and Conference Report are silent as to whether the Coast Guard is to implement this requirement by prohibiting agreements between the owner and the demise charterer with respect to operating the vessel, other than the demise charter itself. This is one of the subjects addressed in the separate rulemaking (*See* the "Related Rulemaking" section in this preamble.).

2. *Charters.* Many comments concerned the potential abuse of the required transfer of control from the owner to the charterer by the use of charter deemed "demise" in name only and of sub-charters that they believe to be inconsistent with the intent of Congress.

(a) A number of comments suggest that the proposed rules would have a detrimental effect on the integrity of the Jones Act, as well as on U.S. military and economic security, because the proposals could allow significant portions of the U.S.-flag coastwise fleet to fall under foreign control.

We agree with the premise of these comments. Thus, our final rule makes foreign capital available to U.S.-flag operators, while at the same time keeps coastwise shipping out of the control of foreign operators. In the separate NPRM (*See* the "Related Rulemaking section of this preamble.), we are proposing various alternatives to deal with the time-chartering back of the vessel from the demise charterer to, for example, an affiliate of the owner.

(b) Many of the comments we received in response to both the NPRM and the SNPRM question not only the proposed rules, but also the policy established by the Coast Guard to implement the lease-financing provisions of the 1996 Act. In general, the comments indicate that we may have created an unintended loophole that is effectively allowing the foreign control of vessels operating in Jones Act protected trades.

See our response in paragraph (a) above.

(c) One comment states that proposed § 67.20(a)(6) in the SNPRM should be rewritten so controlling vessel operations and revenues by means of a time charter back to a member of the group that includes a foreign vessel operator would disqualify eligibility, because, as the comment asserts, such an arrangement is a scheme for control and not for investment. The comment adds that § 67.20(a)(9) should broaden the definition of control, so that the time-charter-back scheme would be recognized for what it is—a control scheme.

See the response in paragraph (a) above.

(d) Eleven comments express support for the Jones Act and for broadening sources of financing for vessels in the domestic trade, while upholding the U.S.-ownership requirement of the Jones Act.

See the response in paragraph (a) above.

(e) Ten comments express support for preserving the basic principles of the Jones Act, because it is the basis of our investments and provides many economic, security, and environmental benefits to our nation.

See the response in paragraph (a) above.

(f) Two comments express support for the Jones Act because they see no need for foreign financing in the industry.

Insofar as these comments contend that there was no need for foreign financing for U.S. vessels, we disagree that Congress did not authorize foreign financing of U.S. vessels. Indeed, that was an expressed purpose of the law as stated in the Conference Report. On the other hand, we agree that Congress also did not intend any more of a relaxation

of the Jones Act than was necessary to effectuate the purposes of the lease-financing provision. It sought to preserve control of the operation and management of lease-financed vessels in the hands of section 2 citizens by means of requiring a long-term demise charter to such a citizen. The final rule and the separate NPRM (*See* the "Related Rulemaking" section of this preamble.) attempt to strike the appropriate balance to effectuate that Congressional intent.

(g) Ten comments state that some foreign entities are not abiding by the intent of Congress in 46 U.S.C. 12106(e) and have used this provision as a loophole to avoid coastwise citizenship requirements. They ask that this loophole be eliminated in the regulations.

We agree with the contention that Congress did not intend a wholesale repeal of the Jones Act with the lease-financing amendments. Instead, it intended a narrow relaxation of the ownership requirements of that law to allow a broadening of the capital market available to U.S. operators, while preserving control of the vessel in the hands of a U.S. citizen. The final rule, together with the proposals in the separate rulemaking (*See* the "Related Rulemaking" section in this preamble.), are designed to preserve the Jones-Act protections completely, while allowing lease-financing owners to own vessels in coastwise trade.

(h) Three comments stated that the proposed regulations should focus on ensuring that the demise charter meets the intent of the coastwise protection laws.

We agree that one of the key inquiries is whether control of the vessel is vested in the demise charterer unaffected by any agreement, including a side agreement outside of the demise charter itself, an understanding between the owner or any entity exercising control over the owner and the demise charterer, or otherwise, that would vest control of the vessel in the owner or a member of the owner's group. We do not necessarily agree that the demise charterer should be able to time charter the vessel to anyone of the charterer's choosing without restriction. If, for example, the demise charterer time charters the vessel back to the owner or a member of the owner's group, there is a potential loss of control of the vessel by the demise charterer to an entity that we believe Congress did not intend to have any control over the vessel. A number of comments have termed this as the "time-charter-back" issue. We have proposed to deal with that issue in the separate NPRM (*See* the "Related Rulemaking" section in this preamble.) for the reasons stated in the preambles to this rule and to the NPRM.

(i) Nine commenters stated that the lease-financing law has protected the control of coastwise-eligible vessels by U.S. citizens due to the requirement that coastwise vessels be demise chartered to an entity qualified to engage in the coastwise trade.

We disagree with the comments that contend that the law is clear and unambiguous on how to preserve control by section-2 U.S. citizens over vessels lease financed by foreigners. We also disagree that the so-called additional requirements in our regulations are unnecessary, counter-productive, or both in fulfilling the Congressional intent by threatening the sources of financing. See our reasons stated in the "General Comments" and "Comments to Specific Sections" sections of this preamble in response to comments raising similar issues. We have not addressed the additional requirements of the existing documentation law, such as the requirement that the vessels be U.S.-built, because this requirement did not originate with the 1996 Act.

(j) Six comments support using the lease-financing provision to justify self-financing of vessels used in domestic commerce primarily to carry proprietary cargo. One comment approves of transactions similar to those used by quasi-Bowater organizations.

These issues are discussed in the preamble to the separate NPRM. (*See* the "Related Rulemaking" section of this preamble.)

(k) One comment recommends that the term "coastwise-qualified U.S. citizen" be used and defined as a citizen that must be independent of, and not controlled (by contract, fiduciary relationship, or otherwise) by, the non-citizen owner or any member of the owner's group. According to the comment, this would preclude U.S. citizens from agreeing to act as straw men for aliens.

We believe that this issue is already adequately covered in 46 CFR part 67, subpart C, and that no additional definition is needed.

(l) To ensure that our rule does not undermine the Jones Act, one comment recommends that we require the non-citizen applicant to be licensed as a banking institution in the United States under U.S. banking laws and that we require the non-citizen applicant to prove that it has been a bona fide financial institution for not less than 10 years.

We can find no legal support for this suggestion and, therefore, have not adopted it.

(m) One comment states that, to protect U.S. national and economic security, the rule should include a "catch-all" provision that prohibits placing effective control of U.S.-flag vessels engaged in the coastwise trade in the hands of an alien.

We believe that the concern expressed in this comment is adequately addressed in existing documentation regulations (46 CFR part 67, subpart C), as amended by this final rule, and in the proposals in the separate NPRM. (*See* the "Related Rulemaking" section of this preamble.)

(n) One comment states that proposed § 67.20(a)(6) and (a)(9) in the SNPRM should be rewritten to prohibit the operator of a foreign vessel from time chartering the vessel back to a member of the vessel owner's group; because, as the comment asserts, such an arrangement would be a scheme for control and not for investment.

This matter is discussed in the separate NPRM. (*See* the "Related Rulemaking" section of this preamble.)

3. *Perceived "taking of private property" issue.* Several comments contend that the NPRM and SNPRM will accomplish a "taking" of private property without just compensation in violation of the 5th amendment to the U.S. Constitution and of international law. This is discussed in the "Taking of Private Property" section of this preamble.

4. *Grandfather provision (§ 67.20(b)).* (a) Several comments objected to any grandfather provision. They argue that, once the rulemaking is final, all lease-financing owners should comply with the final rules.

We believe that the likely result of such a position would be that the holders of endorsements, who received them in good faith reliance on the policy of the Coast Guard at the time, would have to re-structure, at perhaps some financial expense and with little time to plan for such a restructuring, when the document is renewed.

(b) Comments, principally from those who have received coastwise endorsements under lease financing issued between 1996 and 2002, argue that the proposed grandfather provision is too restrictive. They urge us to adopt a rule that would validate, for future use, the particular types of financial transaction or arrangement under which documents were issued before the final rule was published. In other words, any new vessel owner that chose to use a previously used type of transaction or arrangement in the future would be able to do so. In their view, a grandfather provision that just covers the vessel that received the document, as opposed to

the vessel owner or to the type of transaction or arrangement, is too restrictive and amounts to little effective relief from the changed requirements of this rule.

On one hand, we believe that to require those vessel owners who relied on our prior practice and policy to comply immediately (or at the first renewal of the document) with the new rules would unnecessarily penalize them. On the other hand, we do not believe that the owners of vessels that already have a lease-financing endorsement or that intend to apply for such an endorsement in the future should be entitled to unlimited renewals based on the prior policies and practices of the Coast Guard. The purpose of the grandfather provision is to provide reasonable relief for investments and business arrangements made in reliance on the standard in effect when they were made. Furthermore, allowing owners that already have an endorsement to expand their businesses in a manner not available to others would make those owners and vessels attractive vehicles for further foreign investment in domestic trade, thus contravening the basic tenets of the Jones Act.

In order to properly address the issue of limiting the grandfather provisions and to obtain guidance from those affected by the grandfather provision, we have proposed a time limit to the grandfather provision in the new, separate rulemaking (*See* the "Related Rulemaking" section in this preamble.). The grandfather provision in § 67.20(b) of the SNPRM remains unchanged at this time.

5. *Foreign tax and investment regimes.* Two comments raised questions concerning tax and investment regimes in foreign countries either favoring or disfavoring foreign competition by U.S. interests.

The lease-financing law does not allow the Coast Guard to deny foreign entities the right to engage in lease financing based on whether and to what extent they are granted tax benefits or subsidies by foreign countries. If a foreign entity complies with the lease-financing law and these implementing regulations, we cannot prevent it from engaging in lease financing. As explained elsewhere in this preamble, the lease-financing law accomplished a limited amendment to the Jones Act to increase the amount of foreign capital available to U.S.-vessel owners and operators, while at the same time preserving the time-honored principle that complete control of a vessel in the coastwise trade must be in the hands of a U.S. citizen. Thus, the lease-financing law allows certain foreign banks, leasing companies, and other financial institutions to engage in the lease financing of vessels and, if these regulations are observed, to obtain a coastwise endorsement, even if they have a vessel-operating subsidiary. The law does not condition the entrance into the U.S. lease-financing market on whether and to what extent foreign interests grant tax benefits and subsidies to foreign vessel operators.

6. *Foreign energy companies.* One comment contends that the proposed regulations may effectively permit foreign-owned energy companies to enter the business of owning U.S.-flag vessels and allow those vessels, through arrangements with charterers, to carry their own proprietary cargoes.

Foreign-owned energy companies are not prohibited by the statute from engaging in lease-financing transactions, if they comply with the requirements of the law and the implementing regulations. The subject of carriage of proprietary or non-proprietary cargoes by vessels financed by foreign-owned energy companies will be addressed in the separate rulemaking (*See* the "Related Rulemaking" section in this preamble.) under the charter-back issue.

7. *Consultation with MARAD.* One comment requests that we enlist the services of the U.S. Maritime Administration (MARAD) to review the applications and charters, do background checks, and have the power to require additional supporting data from the applicant.

Although this final rule does not address the use of MARAD's services, the Coast Guard has worked closely with that agency in the development of this final rule. In addition, in the separate rulemaking (*See* the "Related Rulemaking" section in this preamble.), we will ask for comments specifically on the benefits which might be derived from such an arrangement and how the arrangement should be implemented.

8. *Requests for quick completion of this rulemaking.* Nineteen comments urged that the Coast Guard proceed as quickly as possible to a final rule. They contend that Coast Guard policy has allowed undue foreign entry into Jones Act trade and that the continued lack of a final rule invites further incursions.

As discussed in the "Regulatory History" section of this preamble, these comments factored into our decision to postpone holding a public meeting until the second rulemaking. (*See* the "Related Rulemaking" section in this preamble.)

9. *Requests for public meetings.* Numerous comments asked for one or more public meetings on the rulemaking.

This is discussed in the "Regulatory History" section of this preamble.

10. *Moratorium on processing applications for endorsements.* Several comments suggested that our current policy on lease financing is a threat to the Jones-Act industry and recommended a moratorium on the processing of applications for coastwise endorsements under the lease-financing provisions.

We do not believe that a moratorium is legally supportable. Some applications have already been approved under the provisions of 46 U.S.C. 12106(e). There is nothing in either the statute or legislative history that provides a basis for imposing a moratorium on lease-financing applications. Even if there were, by setting forth the requirements to participate in lease financing, publication of this final rule would eliminate the need for a moratorium.

11. *Favorable comments.* We received comments favoring this or that proposal, especially to the changes in the SNPRM. For example, one comment supported the SNPRM as written because it strikes the proper balance by encouraging financing for U.S. coastwise vessel assets, while retaining operating control over those assets with fully qualified coastwise entities, and because it is an appropriate exercise of the Coast Guard's regulatory authority.

II. Comments to Specific Sections

Section 67.3, Definitions

1. One comment recommends that we define the term "operation or management of vessels" to identify those business activities of an owner or group that are relevant in determining whether a person may qualify as a vessel owner.

Based on the suggested wording in comment letter number 30 in the docket to this rulemaking (*See* **ADDRESSES**), we have added such a definition in § 67.3.

2. One comment recommends that we define the term "demise charter" in the regulation so that it cannot be confused with a time charter or a hybrid of the two. The comment contends that time charters are often mislabeled as demise charters.

This concern of mislabeling is remedied, in part, by the addition of a definition of the term "sub-charter" in § 67.3, which is defined to include all types of charters. See the new use of the term "sub-charter" as it appears in §§ 67.147(d) and 67.179(d) in this final rule.

3. Several comments objected to the definition of "primarily engaged in

leasing or other financing activities" in § 67.3 of the NPRM being restricted to banks or institutions that were engaged in banking. They objected to our reliance on the language of the Conference Report that banks, leasing companies, or other financial institutions would qualify. Some of the comments assert that this phrase is vague in that it is unclear whether the qualifying entity is limited to one that only provides "banking" services.

We agree and made changes to the SNPRM. The final rule further clarifies that the financial institution that may qualify is not limited to a bank, although such an institution would qualify. It includes other entities that are primarily engaged in financing activities, including lease financing. In addition to Federal- or State-chartered banks, the term would include, but not be limited to, vendor financing credit companies, industrial commercial finance companies, and leasing companies, provided that there is an element of financing involved in the transaction.

Section 67.20, Coastwise Endorsement for a Vessel Under a Demise Charter

1. To ensure that our rule on lease financing does not undermine the Jones Act, one comment recommends that we require the non-citizen applicant to be licensed as a banking institution in the United States under U.S. banking laws and to prove that it has been a bona fide financial institution for not less than 10 years.

We disagree that the non-citizen applicant must be a licensed banking institution. Neither the statute nor the Conference Report indicates that the applicant must be a banking institution. Other financial institutions, such as insurance companies or pension plans, might qualify. However, we believe that there must be a vessel-financing component in the transaction. Therefore, we revised the definition of the term "primarily engaged in leasing or other financing transactions" in § 67.3 to include only transactions with a financing component and to exclude special-purpose leasing companies. There is no basis for limiting lease-financing entities only to banks or for requiring the financial institution to be in business for 10 years. To do so would severely limit the funds available for lease financing.

2. One comment to § 67.20(a)(4) of the NPRM on the "majority of the aggregate revenues" test stated that Congress, in the Conference Report, did not intend that this test allow up to 49 percent of the aggregate revenues to be derived from vessel operation or management or up to 49 percent of person's or group's activities to have nothing to do with leasing, banking, or similar financing transactions, but to have everything to do, up to 49 percent, with foreign vessel operations and still be allowed under 46 U.S.C. 12106(e). The comment contends that these broad loopholes undermine a level playing field and will result in a degradation of the U.S. fleet.

We believe that the Conference Report strongly supports the requirement that ownership of the vessel be primarily a financial investment and not be by a person primarily engaged in the direct operation of vessels. However, the Conference Report did not define the words "primarily engaged" and did not specify where to draw the line between primarily engaged and not primarily engaged. These rules implement the statute as we believe Congress intended. They protect the Jones Act principles while allowing foreign owners to qualify even if they have a vessel owning and operating affiliate. The Conference Report indicates that the owner should qualify under the law so long as the majority of the aggregate revenues of the owner, its parent (as defined herein to include all parents in the owner's chain of ownership to the ultimate parent) and the group are not derived from the operation or management of vessels. We believe that inclusion of the owner, the owner's parent, and the owner's group in the aggregate revenues test is consistent with the law and the legislative history. Using the aggregate revenue test in this way is one measure, although not necessarily the only measure, of determining whether the owner, the owner's parent, or the owner's group is primarily engaged in vessel operation or management.

3. One comment on § 67.20(a)(8) of the SNPRM on the operation or management of commercial foreign-flag vessels suggested that routinely prepared and published documents or reports should serve as satisfactory, conclusive proof of the primary business of the group. These documents for a publicly traded company or group might include, without limitation, reports filed with the Securities and Exchange Commission, routine audit reports, or annual reports distributed to shareholders.

We intend to rely primarily on the certifications of the applicant because the applicant is best able to know whether the entire group is primarily engaged in the operation and management of commercial foreign-flag vessels. However, we reserve the right to investigate further when circumstances warrant. In that regard, we may use all available sources of information, including publicly available reports filed with public bodies such as the Securities and Exchange Commission, routine audit reports, and reports distributed to shareholders. As discussed in the separate NPRM (*See* the "Related Rulemaking" section of this preamble.), we may also require that an independent auditor having expertise in marine financing and operations certify that the applicant's operations conform to the requirements of the applicable regulations.

Section 67.147, Application Procedure: Coastwise Endorsement for a Vessel Under a Demise Charter

1. One comment to § 67.147(a)(1) stated that the owner should not have to submit an affidavit because the lease-financing law does not require it.

We believe that the use of certifications is a cost-effective way for the vessel owner to establish that it is qualified for a coastwise endorsement under the lease-financing provisions. While the Director of the National Vessel Documentation Center may request that the owner submit additional documentation supporting the certification, for many owners, the certification will be all that is required. We believe that it is less burdensome to provide a certification rather than to submit various documents to show that the owner is qualified. Also, the owner is the person most qualified to determine whether the owner and group meet the "primarily engaged in operation or management of vessels" test. We may obtain information from publicly available sources or rely upon the advice of an independent auditor as explained in the separate NPRM (*See* the "Related Rulemaking" section of this preamble).

To the extent this comment is based on the argument that the lease-financing law is clear on its face and there is no place in the implementing regulations for considering the Conference Report in interpreting the law, we disagree. *See* the discussion in the "General Comments" section that articulates our reasons for considering the Conference Report and other sources of Congressional intent in order to properly implement the law.

2. Ten comments oppose § 67.147(a)(1)(i) in the NPRM, which would require the owner to certify that it is a bank, leasing company, or other financial entity. It should have referenced the owner, the parent of the owner, or a subsidiary of a parent of the owner, as in 46 U.S.C. 12106(e).

We agree with these comments to the NPRM. Section 67.147(a)(1)(i) in the SNPRM was revised accordingly.

3. One commenter stated that proposed § 67.147(a)(1)(ii) and (a)(1)(iv) in the NPRM (§ 67.147(a)(1)(iii), (iv), and (vi) in the SNPRM) find no support in the language of the statute.

We disagree. To the extent that this comment contends that the language of the statute is clear and unambiguous in setting forth what we may require in implementing regulations, see our discussion on this subject in the "General Comments" section of this preamble. We believe that one must refer to the Conference Report to properly implement this statute. The provisions addressed by this comment come from the Conference Report and reflect Congressional intent.

4. One comment to the NPRM stated that § 67.147(a)(1)(iv) on the aggregate revenues test and § 67.147(a)(1)(v) on the operation or management of foreign-flag vessels both refer to the owner, parent, or subsidiary of the parent and that this varies from the Conference Report.

In § 67.147(a)(1)(v) and (a)(1)(vi) of the SNPRM, we changed the "or" to "and." In the final rule, we apply the aggregate revenues test to each of the following taken separately: the owner, the parent of the owner, and the owner's group. We agree that the aggregate revenue test should be applied only to the owner, the owner's parent, and the group of which the owner is a part and not to each entity within the group of which the owner is a part. Similarly, in the final rule, we apply the operation and management test to the owner, the parent, and to the owner's group as a whole, but not to each entity within the group. We believe, based on the Conference Report statement to this effect, that Congress intended that an owner could qualify if one of the affiliates of the owner's group was engaged in the operation or management of vessels, provided that the aggregate revenues of the group as a whole, as well as the owner and the owner's parent, were not derived from vessel operation or management.

Assessment

Due to substantial public interest, this rule is classified as a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is "significant" under the regulatory policies and procedures of the Department of Homeland Security. The Assessment in the docket for the SNPRM is unchanged for the final rule.

There are no mandatory costs associated with this rulemaking. Vessel owners that choose to take advantage of the lease-financing option would incur costs imposed by this rule that include preparing and submitting the required documents. Those costs vary from applicant to applicant.

This rule requires vessel and barge owners and charterers opting to take advantage of the lease-financing provisions in 46 U.S.C. 12106(e) to submit certain documents to the Coast Guard's National Vessel Documentation Center (NDVC). According to our data, 87 business entities have applied under the lease-financing provisions since the passage of the 1996 Act. We estimate that the number of entities opting to do the same in the future will be about 35 annually. We estimate that it would take about 12 hours to prepare the affidavits and make the submissions. Using an average estimated rate of $167 per hour, the total cost per application is $2004. The annual cost is expected to be $70,140 (§ 2004 × 35). The 10-year present value, 2003–2012, is approximately $540,000.

Congress intended to broaden the sources of capital for owners of U.S. vessels engaged in the coastwise trade by creating new lease-financing options. This rule removes the technical impediments to using various techniques for financing vessels operating in the domestic trade by increasing the sources of capital available to vessel owners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect vessel owners and charterers who choose to take advantage of the lease-financing option. This option reduces the burden on owners by increasing vessel-financing options that would be acceptable for vessel documentation, enabling vessel owners to obtain the cheapest financing available. Companies tend to choose lease financing only if they expect its costs to be offset by increased profits. Under this rule, to take advantage of the lease-financing option, both the vessel owner and vessel charterer must submit affidavits and a copy of their charter or sub-charter to the NVDC. The estimated cost of preparing and submitting this material will be minimal.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. The NPRM and SNPRM provided small businesses, organizations, and governmental jurisdictions with a Coast Guard contact to handle questions concerning this rule's provisions.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Sections 67.147 and 67.179 amend the collection-of-information requirements for vessel owners and charterers applying to engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). The Coast Guard needs this information to determine whether an entity meets the statutory requirements. These provisions will require modifying the burden in the previously approved collection under OMB Control Number 2115–0110 (now 1625–0027). No comments were received relating to the collection-of-information requirements as presented in the NPRM or SNPRM.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. The section numbers are §§ 67.147 and 67.179, and the corresponding approval number from OMB is OMB Control Number 1625–0027 (formerly 2115–0110). OMB has not yet completed its review of, or approved the changes to, this collection. Therefore, §§ 67.147 and 67.179 in this rule will not become effective until

approved by OMB. We will publish a document in the **Federal Register** announcing OMB's approval and effective date of those sections.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Several commenters contend that the proposals in the NPRM and the SNPRM would accomplish a taking of private property without just compensation in violation of the 5th amendment to the U.S. Constitution and international law. They argue that they have invested millions of dollars in lease-financing transactions in reliance on the Coast Guard's assurances that their transactions would be approved by the Coast Guard. Although the comments do not set forth the specifics of their claims of takings, the comments do appear to assert that the Coast Guard created a property right in the transactions engaged in by the commenters when it approved their applications and that the proposals in the NPRM and SNPRM, to the extent that they differ materially from past policies, would diminish the value of that property right, thus resulting in a compensable taking.

We disagree that the regulations accomplish such a taking. The courts have recognized two types of takings in the context of regulatory actions by Federal agencies. The first is a regulatory taking, and the second is a categorical taking. The rules with respect to each type were recently set forth in *Maritrans Inc.* v. *United States* (No. 96–483 C, Dec. 21, 2001; 51 Fed. Cl. 277; 2001 U.S. Claims Lexis 263; 53 ERC (BNA) 1989; 2002 AMC 419). Briefly, the court stated, with respect to both types of takings, that a mere diminution, however serious, is insufficient to demonstrate a taking (Slip op. at p. 5). According to the U.S. Supreme Court, legislation readjusting rights and burdens is not unlawful solely because it upsets settled expectations (*Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15–16 (1976)). The commenters have not asserted that the vessels they are operating under lease-financing coastwise endorsements will become valueless as a result of this rulemaking. They have asserted that they may, in the future, have to restructure or divest their investment or adjust their expectations as to how much longer and under what circumstances they can continue to so operate them. However, these claims are insufficient to establish a compensable taking under the Constitution or under international law.

The commenters further contend they have a compensable claim under the Restatement of the Foreign Relations Law of the United States, section 712. These claims are governed by section 713(2) of the Restatement. Section 713(2)(a) allows parties to pursue remedies provided by international agreement. Here, commenters suggest that the Charter of Economic Rights and Duties of States applies. Yet, the Charter only governs state action nationalizing, expropriating, or transferring private property. The Charter does not apply here because the regulations will not accomplish any of these actions. Other subsections of section 713 of the Restatement are equally inapplicable on their face.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, although it is considered a "significant regulatory action" under Executive Order 12866. We expect that this rulemaking will not have a significant adverse effect on the supply, distribution, or use of energy, including a shortfall in supply, price increases, and increased use of foreign supplies. The Administrator of the Office of Information and Regulatory Affairs has not designated this rulemaking as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rulemaking is administrative in nature and identifies the information necessary to apply for a coastwise endorsement under 46 U.S.C. 12106(e). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

■ 1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110, 12106, 12120, 12122; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 67.3, revise the definition for the term "person"; and add, in alphabetical order, definitions for the terms "affiliate," "group," "operation or management of vessels," "parent," "primarily engaged in leasing or other financing transactions," "sub-charter," and "subsidiary" to read as follows:

§ 67.3 Definitions.

* * * * *

Affiliate means a person that is less than 50 percent owned or controlled by another person.

* * * * *

Group means the person that owns a vessel, the parent of that person, and all subsidiaries and affiliates of the parent of that person.

* * * * *

Operation or management of vessels means all activities related to the use of vessels to provide services. These activities include ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

Parent means any person that directly or indirectly owns or controls at least 50 percent of another person. If an owner's parent is directly or indirectly controlled at least 50 percent by another person, that person is also a parent of the owner. Therefore, an owner may have multiple parents.

Person means an individual; corporation; partnership; limited liability partnership; limited liability company; association; joint venture; trust arrangement; and the government of the United States, a State, or a political subdivision of the United States or a State; and includes a trustee, beneficiary, receiver, or similar representative of any of them.

Primarily engaged in leasing or other financing transactions means lease financing, in which more than 50 percent of the aggregate revenue of a person is derived from banking, investing, lease financing, or other similar transactions.

* * * * *

Sub-charter means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

Subsidiary means a person at least 50 percent of which is directly or indirectly owned or controlled by another person.

* * * * *

■ 3. Add § 67.20 to read as follows:

§ 67.20 Coastwise endorsement for a vessel under a demise charter.

(a) Except as under paragraphs (b) through (e) of this section, to be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel under a demise charter must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c), has not lost coastwise eligibility under § 67.19(d), and was financed with lease financing.

(3) The person that owns the vessel, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(4) The person that owns the vessel is organized under the laws of the United States or of a State.

(5) None of the following is primarily engaged in the direct operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(6) The ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(7) The majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(8) None of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(9) The person that owns the vessel has transferred to a qualified U.S. citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(10) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(11) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 and 46 U.S.C. 12106(e) before February 4, 2004, may continue to operate under that endorsement on and after that date and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3);

(2) Deletion under § 67.171(a)(1) through (a)(6); or

(3) Cancellation under § 67.173.

(c) A vessel under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible for documentation with a coastwise endorsement under § 67.19 and 46 U.S.C. 12106(e). The vessel may continue to operate under that endorsement and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3);

(2) Deletion under § 67.171(a)(1) through (a)(6); or

(3) Cancellation under § 67.173.

(d) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in coastwise trade before February 4, 2004, may continue to operate in that trade after that date unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of subpart C of this part; or

(6) The barge ceases to be capable of transportation by water.

(e) A barge under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b). The barge may continue to operate in coastwise trade unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of subpart C of this part; or

(6) The barge ceases to be capable of transportation by water.

(f) To apply for a coastwise endorsement for a vessel under a demise charter, see § 67.147 and, for a barge, see § 67.179.

§ 67.35 [Amended]

■ 4. In § 67.35, at the end of paragraph (c), add the words "or the vessel qualifies under § 67.20".

■ 5. In § 67.36, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 67.36 Trust.

* * * * *

(c) * * *

(1) It meets the requirements of paragraph (a) of this section and at least 75 percent of the equity interest in the trust is owned by citizens; or

(2) It meets the requirements of § 67.20.

■ 6. In § 67.39, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 67.39 Corporation.

* * * * *

(c) * * *

(1) It meets the requirements of paragraph (a) of this section and at least 75 percent of the stock interest in the corporation is owned by citizens; or

(2) It meets the requirements of § 67.20.

* * * * *

■ 7. Add § 67.147 to read as follows:

§ 67.147 Application procedure: Coastwise endorsement for a vessel under a demise charter.

(a) In addition to the items under § 67.141, the person that owns the vessel (other than a barge under § 67.179) and that seeks a coastwise endorsement under § 67.20 must submit the following to the National Vessel Documentation Center:

(1) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the vessel and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the vessel, the parent of that person, or a subsidiary of a parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the vessel is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(iv) That ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vii) That the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(viii) That the vessel is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG–1258 that is submitted under § 67.141 and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter with another person for the use of the vessel—

(1) The charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter if requested to do so by the Director; and

(2) If the sub-charter is a demise charter, the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

■ 8. In § 67.167, in paragraph (c)(8), remove the last "or"; in paragraph (c)(9), remove the period and add, in its place, a semicolon; and add paragraphs (c)(10) and (c)(11) to read as follows:

§ 67.167 Requirement for exchange of Certificate of Documentation.

* * * * *

(c) * * *

(10) For a vessel with a coastwise endorsement under 46 U.S.C. 12106(e), except for a vessel with a coastwise endorsement under 46 U.S.C. 12106(e) that was in effect before February 4, 2004—

(i) The demise charter expires or is transferred to another charterer;

(ii) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement;

(iii) Neither the person that owns the vessel, nor the parent of that person, nor any subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions;

(iv) The majority of the aggregate revenues of at least one of the following is derived from the operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member; or

(v) At least one of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member; or

(11) For a vessel with a coastwise endorsement under 46 U.S.C. 12106(e) that was in effect before February 4, 2004—

(i) The demise charter expires or is transferred to another charterer;

(ii) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement; or

(iii) Neither the person that owns the vessel, nor the parent of that person, nor a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

* * * * * *

■ 9. Add § 67.179 to subpart M to read as follows:

§ 67.179 Application procedure: Coastwise operation of a barge under a demise charter.

(a) The person that owns a barge qualified to engage in coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e) must submit the following to the National Vessel Documentation Center:

(1) A certification, in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the barge and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the barge, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the barge is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(iv) That ownership of the barge is primarily a financial investment without the ability and intent to directly or indirectly control the barge's operations by a person not primarily engaged in the direct operation or management of the barge.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* for the term of the charter.

(viii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12102(e).

(ix) That the barge is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter with another person for the use of the barge—

(1) The charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter if requested to do so by the Director; and

(2) If the sub-charter is a demise charter, the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

Dated: January 29, 2004.

Thomas H. Collins,

Admiral, Coast Guard, Commandant.

[FR Doc. 04–2230 Filed 1–30–04; 11:34 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[USCG–2003–14472]

RIN 1625–AA63

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2003–15171]

RIN 2133–AB51

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking

AGENCIES: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: This is a joint notice of proposed rulemaking by the Coast Guard and the Maritime Administration.

The Coast Guard proposes to amend its regulations on documentation, under the lease-financing provisions, of vessels engaged in the coastwise trade. One proposal addresses the issue of whether we should prohibit or restrict the chartering back (whether by time charter, voyage charter, space charter, contract of affreightment, or other contract for the use of a vessel) of a lease-financed vessel to the parent of the vessel owner or to a subsidiary or affiliate of the parent. A second proposal would establish a limit on the length of time that a coastwise endorsement issued before February 4, 2004, would run. The final subject concerns the question of whether applications for an endorsement under the lease-financing provisions should be reviewed and approved by an independent third party with expertise in vessel chartering. Though these subjects were discussed in many of the comments received to the previous Coast Guard rulemaking on lease financing, we feel that we need additional public input specifically focused on these subjects and on our proposed changes. These proposals would amend the final rule (USCG–2001–8825) on vessel documentation under lease financing found elsewhere in this issue of the **Federal Register**.

The Maritime Administration (MARAD) proposes to amend its regulations to require MARAD's approval of all transfers of the use of a lease-financed vessel engaged in the coastwise trade back to the vessel's foreign owner, the parent of the owner, a subsidiary or affiliate of the parent, or an officer, director, or shareholder of one of them. In 1992, MARAD amended its regulations to grant general approval for time charters of U.S.-flag vessels to charterers that were not U.S. Citizens (non-citizens) and to eliminate MARAD's review of these time charters. The lease-financing provisions potentially allow a non-citizen to exert additional control over a vessel operated in the coastwise trade by becoming the owner of the vessel and time chartering the vessel back to itself or to a related entity through an intermediate U.S. Citizen bareboat charterer. MARAD's review of charter arrangements in the limited circumstances where the time charterer is related to the non-citizen vessel owner will ensure that U.S. Citizens maintain control over vessels operating in the coastwise trade.

DATES: Comments and related material must reach the Docket Management Facility on or before May 4, 2004. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 4, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–14472 or MARAD Docket No. MARAD–2003–15171 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility (USCG–2003–14472 or MARAD Docket No. MARAD–2003–15171), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT:

Coast Guard: If you have questions on the Coast Guard's proposed rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506.

Maritime Administration: If you have questions on the Maritime Administration's proposed rule, call John T. Marquez, Jr., Maritime Administration, telephone 202–366–5320.

Docket Management Facility: If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We (the Coast Guard and the Maritime Administration, depending upon the context) encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. The Coast Guard has an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (either USCG–2003–14472 or MARAD Docket No. MARAD–2003–15171), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Public Meeting

The Coast Guard and MARAD plan to hold a joint public meeting on this rulemaking at a time and place to be given in a separate notice published in the **Federal Register**.

Though the Coast Guard did not believe that a public meeting would provide sufficient benefit to justify the delay in publishing its final rule under Coast Guard docket USCG–2001–8825 (which appears elsewhere in this issue of the **Federal Register**), we do believe that a public meeting on the issues raised in this notice will benefit the present rulemaking. At present, we plan only one public meeting, but you may submit a request for more than one to the Docket Management Facility at the address under **ADDRESSES** explaining why more than one would be beneficial. If we determine that more than one would aid this rulemaking, we will publish the dates of the meetings and their locations in the separate notice in the **Federal Register**.

Related Rulemakings

Coast Guard. A separate but related Coast Guard final rule entitled "Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade" (RIN 1625–AA28 (formerly RIN 2115–AG08), USCG–2001–8825) appears elsewhere in this issue of the **Federal Register**. The changes that the Coast Guard is proposing in this notice of proposed rulemaking, if adopted, would amend that final rule.

Maritime Administration. MARAD published a notice of policy review with request for comments entitled "General Approval of Time Charters" on August 2, 2002, in the **Federal Register** (67 FR 50406). The notice raises the question of whether MARAD's policy of granting general approval of time charters should be changed. The docket number for that project is Docket No. MARAD–2002–12842.

Background and Purpose

Coast Guard. In 1996, Congress amended the vessel documentation laws to allow lease financing of vessels engaged in the coastwise trade (section 1113(d) of Pub. L. 104–324, the Coast Guard Authorization Act of 1996; 46 U.S.C. 12106(e)) ("the 1996 Act"). Lease financing is a very common way to finance capital assets in the maritime industry. Under lease financing, ownership of the vessel is in the name of the lessor (owner), with a demise charter to the charterer of the vessel. (A "demise charter," also known as a "bareboat charter," is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it.) Many vessel operators choose to acquire or build vessels through lease financing, instead of the traditional mortgage financing, because of possible cost benefits.

According to the legislative history for the 1996 Act (*see* House Conference Report No. 104–854; Pub. L. 104–324; 1996 U.S. Code Congressional and Administrative News, p. 4323)(Conference Report), Congress intended to broaden the sources of capital for owners of U.S. vessels engaged in the coastwise trade by creating new lease-financing options. At the same time, Congress did not intend to undermine the basic principle of U.S. maritime law that vessels operated in domestic trades must be built in shipyards in the U.S. and be operated and controlled by U.S. Citizens, which is vital to U.S. military and economic security.

The Coast Guard issued a final rule (USCG–2001–8825, published elsewhere in this issue of the **Federal Register**), which sets out requirements concerning eligibility, under lease financing, for a coastwise endorsement to a vessel's Certificate of Documentation and the procedure to apply for such an endorsement. Several of the comments to that rulemaking raised important questions which are worthy of consideration but ones on which we need further assistance from industry and the public. It is those questions that are the subjects of the Coast Guard's second rulemaking on lease financing of vessels in the coastwise trade.

MARAD. Section 9 of the Shipping Act of 1916, 46 App. U.S.C. 808, requires prior approval of the Secretary of Transportation (MARAD) for, among other things, the charter to non-citizens of documented vessels owned by citizens of the United States. Before 1989, MARAD's approval was required on a case-by-case basis for time charters of U.S.-flag vessels to non-citizens. However, as a result of substantial changes to the Ship Mortgage Act (repealed in 46 App. U.S.C. 921) and amendments to section 9 of the Shipping Act, MARAD began a rulemaking in 1989 to amend its regulations at 46 CFR part 221, Regulated Transactions Involving Documented Vessels and other Maritime Interests. The rulemaking culminated in the publication of a final rule on June 3, 1992, 57 FR 23470, that liberalized the approval process under section 9 for certain transfers to non-citizens.

Part 221 as now written grants general approval of the sale, mortgage, lease, charter, etc. (but not transfer of registry or bareboat charter of vessels operating in coastwise trade) of citizen-owned vessels to a non-citizen, so long as the country is not at war, there is no Presidential declaration of national emergency invoking section 37 of the Shipping Act of 1916, and the non-citizen is not subject to the control of a county with whom trade is prohibited. The general approval of time charters to non-citizens was predicated on the fact that a time charterer merely rents cargo space on a vessel and does not assume substantially all of the benefits and risks incident to the ownership of the vessel or retain a property interest in the vessel. The U.S.-Citizen vessel owner or bareboat charterer retains possession of the vessel and maintains the vessel, employs and pays the crew, and is responsible for the expenses of running the vessel.

MARAD's regulation granting general approval was based on the assumption that the vessel would ultimately be operated and controlled by U.S. Citizens because only a U.S. Citizen could own or bareboat charter a vessel to be operated in the coastwise trade. The lease-financing provisions potentially allow a non-citizen to now become the owner of the vessel and, through an intermediate U.S.-Citizen bareboat charterer, to time charter the vessel back to itself or a related entity. This scenario was not contemplated by MARAD when it promulgated its regulation granting general approval of time charters to non-citizens. Because a non-citizen can exert greater control over the vessel by participating as both the vessel owner and time charterer, we believe that MARAD review of time charters in this limited circumstance is warranted under section 9(c)(1) of the Shipping Act of 1916, 46 U.S.C. App. 808(c)(1).

On August 2, 2002, MARAD published a request for comments in the **Federal Register**, 67 FR 50406, to determine whether our policy of granting general approval for time charters to non-citizens should be amended. The commenters overwhelmingly agreed that a return to

MARAD review of all time charters to non-citizens would not be a useful change. However, there was significant support for MARAD review of time charters in the limited circumstances where the time charterer is related to the non-citizen vessel owner and the vessel is to be operated in the coastwise trade.

We agree with the commenters that MARAD review of time charters is necessary where the time charterer is related to the non-citizen vessel owner in order to ensure that non-citizens are not able to exercise an excessive level of control over vessels operating in the coastwise trade. Accordingly, we propose to amend our regulations at 46 CFR 221.13 to require MARAD approval of time charters where the vessel has been documented pursuant to 46 U.S.C. 12016(e) and is time chartered back to an entity that is related to the non-citizen vessel owner.

Issues Addressed and Discussion of Proposed Changes—Coast Guard

The Coast Guard's proposed rule addresses the following subjects:

1. *To what extent and how should the Coast Guard prohibit or restrict the chartering back (whether by time charter, voyage charter, space charter, contract of affreightment, or other contract for the use of a vessel) of a lease-financed vessel to the owner, the parent, or to a subsidiary or affiliate of the parent?*

The proposed changes on this subject are in proposed § 67.20(a)(6) and (a)(9), either or both of which are proposed for adoption.

Congress stated that control of the lease-financed vessel holding a coastwise endorsement must be in the demise charterer. Because control of the vessel may be affected by a charter-back from the demise charterer to the owner, the owner's parent, or to a subsidiary or affiliate of the parent, we believe that the intent of Congress would be frustrated if charter-back arrangements were not prohibited or at least restricted. We present two amendments (§§ 67.20(a)(6) and 67.20(a)(9)) for restricting charters-back, either or both of which are proposed for adoption.

Alternative 1 (§ 67.20(a)(6)). The first alternative proposal would amend § 67.20(a)(6), which requires that the vessel owner not be primarily engaged in the direct operation or management of vessels. The proposed change would extend this limitation not just to the owner but also to the overall group of which that owner is a member. As defined in § 67.3, the word "group" includes the owner, the owner's parent, and all subsidiaries and affiliates of the parent. This provision would prohibit the demise charterer from sub-chartering back to a member of the owner's group. We believe that a charter-back arrangement could be permissible under the statute if the charter-back arrangement is merely for the purpose of providing the legal framework under which the vessel will earn revenue for the demise charterer and if the demise charterer retains all aspects of control of the operation of the vessel, other than that which is directly involved in generating revenue. We recognize, however, that proposed § 67.20(a)(6) does not contain any criteria by which the Coast Guard is to make a determination as to whether the charter-back arrangement is limited to providing the legal basis and provisions for earning revenue or whether the arrangement transfers control over the vessel's operations or management to the sub-charterer. We hope that your comments to this NPRM and comments offered during the public meeting will provide us with an informed basis for making these determinations. If you believe that there is a more effective way to ensure that control of the vessel is not returned to the owner's group through a charter-back arrangement, please tell us.

Alternative 2 (§ 67.20(a)(9)). The second alternative proposal would amend § 67.20(a)(9), which requires that the demise charterer be a person considered to be the owner *pro hac vice* during the term of the charter. The proposed change would add that a demise charterer is not considered to be the owner *pro hac vice* when the vessel is subject to a sub-charter to a member of the group of which the vessel's owner is a member, except when the vessel is engaged in carrying cargo owned by the vessel's owner or by a member of the group of which the vessel's owner is a member and is not carrying cargo for any other entity. This proposal would effectively prevent the chartering-back to a member of the owner's group, unless the vessel is used solely for carrying proprietary cargo of a member of the group. We derived this proposal from some of the comments that urged such a restriction in order to effectuate the intent of Congress that the Jones Act not be undermined. Though many other comments opposed any restriction on chartering-back, we believe that Congress intended to adhere as closely as possible to Jones Act principles, as reflected in the Conference Report. Our proposal in § 67.20(a)(9) is similar in principle to the Bowaters amendment (46 U.S.C. app. 883–1), a limited exception to the Jones Act. Thus, in that regard, our proposal is consistent with what Congress has authorized in the past as a limited exception to the Jones Act.

2. *Establish limitations on the grandfather rights under § 67.20(b) through (e).*

The grandfather provisions in § 67.20(b) and (c) of the Coast Guard's final rule (USCG–2001–8825), published elsewhere in this issue of the **Federal Register**, allow vessels (other than barges) with endorsements issued before the date of publication of that final rule to continue to operate (with certain specified exceptions) under that endorsement indefinitely. Paragraphs (d) and (e) of that final rule allow barges deemed eligible to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b) to continue to operate (with certain specified exceptions) in the coastwise trade indefinitely. In order to bring these vessels and barges under the regulations within a reasonable time, yet be responsive to the economic interests of those who have made investments relying on the Coast Guard's initial interpretation of the lease-financing statute, we propose four changes.

First, § 67.20(b) would be amended to limit the term of the grandfather provision to 3 years after the publication date of the final rule under USCG–2001–8825 (which is the same date as the publication date of this NPRM) and allow it to be renewed annually during that time.

Second, § 67.20(c) would be amended to address the following situation. If the vessel was constructed under a building contract that was entered into before the date of publication of the final rule under USCG–2001–8825 (which is the same date as the publication date of this NPRM) in reliance on a letter ruling from the Coast Guard issued before that date, the vessel would be eligible for a coastwise endorsement and may continue to operate under that endorsement for 3 years after the initial issuance of that endorsement and may renew the document and endorsement during that 3-year period (if the certificate of documentation is not subject to the listed exceptions).

Third, § 67.20(d) would be amended to limit the term of the grandfather provision as it applies to undocumented barges operating under 46 U.S.C. 12102(e) and 12110(b) to 3 years after the publication date of the final rule under USCG–2001–8825 (which is the same date as the publication date of this NPRM).

Lastly, § 67.20(e) would be amended to limit the term of the grandfather provision as it applies to the operation of undocumented barges constructed in reliance upon a letter ruling from the

Coast Guard issued before the publication date of the final rule under USCG–2001–8825 (which is the same date as the publication date of this NPRM) to 3 years after initial entry into service.

We chose a 3-year period as a reasonable amount of time to provide owners with sufficient time to plan and effectuate whatever restructuring is necessary to comply with the regulations. Also, Congress specified, in the lease-financing statute, a term of 3 years (subject to certain exceptions) as the minimum duration of a "long-term" demise charter.

Several comments to the previous rulemaking (USCG–2001–8825) argue that no vessels should be grandfathered and that, once the final rule under USCG–2001–8825 is published, all vessels must comply with that rule. However, we feel that the likely result of such a position would be that the holders of endorsements received before the final rule was published in good faith reliance on the policy of the Coast Guard at that time would have little time to restructure, perhaps at considerable financial expense, before the document is due for annual renewal.

Other comments to USCG–2001–8825, mainly from those who received endorsements between 1996 and 2002, argue that the grandfather provision as it appears in § 67.20(b) of the final rule is too restrictive. They would like us to have adopted a rule that would allow the continued use of the same type of financial transactions or arrangements under which their endorsements were issued. Thus, an application for an endorsement in the future could be based on one of these transactions or arrangements. In their view, a grandfather provision should not just cover the particular vessel that received the endorsement. They argue that this amounts to too little effective relief from the requirements of the final rule.

We believe that to require those vessel owners that relied on our prior practice and policy to comply with USCG–2001–8825 upon the effective date would unnecessarily penalize them. At the same time, we do believe, where USCG–2001–8825 imposes additional or new obligations or restrictions on the issuance of endorsements under lease financing, that the prior holders should not be entitled either to unlimited renewals for the particular vessels or to continued use of the type of transaction or arrangement previously used. Instead, we are adopting a reasonable approach, providing business with a reasonable time to adjust to the new requirements consistent with Congressional language.

3. *Require that applications to the Coast Guard for an endorsement be audited by a third party.* The Coast Guard is considering requiring each applicant to provide, in addition to its own certifications under §§ 67.147 and 67.179, a certification from an independent auditor with expertise in the business of vessel financing and operations. That certification would provide additional assurance that the transaction in fact qualifies under the lease-financing statute and regulations. We recognize that this additional requirement would add time and cost to the process of preparing the application. We are particularly interested in obtaining comment on the following questions:

(a) Should an independent auditor be used?

(b) What are the minimum qualifications of an auditor?

(c) Who should select the auditor, the Coast Guard, another government agency, or the applicant?

(d) If the applicant selects the auditor, how should the Coast Guard ensure that the auditor is truly independent? Should the Coast Guard provide a list of approved auditors from which the applicant may choose?

(e) What standards does the auditor apply in deciding whether to examine the details of the proposed transaction beyond the face of the documents submitted?

(f) Would the added benefit provided by the certification by the independent auditor justify the extra time and cost of obtaining such a certification?

(g) Would such an audit be an inherently governmental function that should not be entrusted to an independent auditor?

(h) Should we increase our investigation and examination of applications for vessel documentation?

Discussion of Proposed Changes: Maritime Administration

MARAD proposes to amend its existing regulations in 46 CFR part 221, subpart B, on the approval of the sale, lease, charter, delivery, or any manner of transfer of an interest in or control of a U.S. documented vessel to a non-U.S. Citizen. Existing § 221.13(a) grants general approval of these transactions. The proposed change would require the approval of the Maritime Administrator when a vessel under 46 U.S.C. 12106(e) is involved and when the transfer is back to the vessel's owner, a member of the owner's group (*i.e.*, the owner, the parent of the owner, or a subsidiary or affiliate of the parent) or to an officer, director, or shareholder of the owner or a member of the owner's group.

The general approval of certain transfers to non-citizens currently provided for in 46 CFR 221.13 was based on a statutory scheme in which a non-citizen could not be the owner and time charterer of a vessel. Prior to 1996, an owner of a vessel documented with a coastwise endorsement generally had to be a U.S. citizen. After passage of the Coast Guard Authorization Act of 1996, a vessel owner could be a non-citizen if the vessel was chartered under a demise charter to a U.S. citizen. Because 46 CFR 221.13 was not amended, the U.S.-citizen demise charterer of the vessel could still sub-charter the vessel to a non-citizen. If a non-citizen is permitted to own a vessel and to time charter the vessel back to itself or a related entity, it can potentially exert much greater control over the operation of the vessel. Accordingly, MARAD review of these transfers is warranted under 46 App. U.S.C. 808(c)(1).

If you believe that there is a more effective way to ensure that control of the vessel is not returned to the owner's group, please provide comments. In addition, if you believe that the review or restriction of charter back arrangements in this limited circumstance will unduly restrict competition in the coastwise trade, we request that you provide comments.

Assessment

Coast Guard

Due to substantial public interest, the Coast Guard's proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is "significant" under the regulatory policies and procedures of the Department of Homeland Security. A draft Assessment follows:

The grandfather provisions in § 67.20(b) through (e) would be revised to incorporate an appropriate time period after which the provision would no longer apply. The proposed rule would affect a small number of vessel owners and charterers whose coastwise endorsements were issued under the lease-financing provision since the passage of the Act in 1996.

Currently, there are 87 entities that have had their coastwise endorsements approved under the lease-financing option. We anticipate that at least two of these entities could be adversely affected by this proposed rule and could not, through the lease finance mechanism, charter back a vessel to an

entity related to the foreign owned entity that is financing the vessel. Under the proposed regulations, a vessel operator is not precluded from using lease financing as a mechanism for financing the vessel. The regulations would potentially restrict the operation of vessels that are documented under the lease-financing provisions to ensure that the vessels are properly chartered. The affected vessel owners are still free to engage in lease financing with an entity that qualifies as a U.S. citizen or a foreign owned entity that is not related to the time charterer of the vessel. Nevertheless, the vessel operator is not prohibited from using lease financing under the proposed regulations.

Although the proposed rule promulgates limitations to the grandfather provisions, it would allow companies to have a significant amount of time for planning and exploring other options. Based on this amount of time, we estimate the economic impact to be minimal. We encourage comments on this assessment, particularly those that clearly illustrate any specific negative economic impact of this proposed rulemaking.

Maritime Administration

Due to substantial public interest, MARAD's proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has reviewed it under that Order. It is "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). A draft Assessment follows:

The proposed rule proposes to reinstate MARAD's review of transfers of control to non-citizens where the vessel has been documented by a non-citizen under the lease-financing provisions at 46 U.S.C. 12016(e) and the transfer is back to the non-citizen vessel owner or a related entity. When MARAD amended its regulations in 1992 to grant general approval for time charters of U.S.-flag vessels to charterers that were not U.S. Citizens, there was no opportunity for a non-citizen to be both the owner and charterer of a vessel engaged in coastwise trade. However, enactment of the lease-financing provisions inadvertently created that opportunity. Lease-financing provisions are intended to provide increased sources of capital for qualified owners engaged in coastwise trade. These provisions are not intended to allow increased ownership and control of coastwise vessels by non-U.S. citizens. MARAD's review of charter arrangements in the limited circumstances where the time charterer is related to the non-citizen vessel owner will ensure that U.S. Citizens maintain control over vessels operating in the coastwise trade.

This proposed rulemaking modifies, but does not negate, financing opportunities available to some businesses engaged in coastwise trade. The rule continues to provide flexible financing structures and increased sources of capital to qualified U.S. entities that are entitled to engage in domestic trade. The corresponding costs and benefits of these changes in financing opportunities are not quantifiable at this time. Non-quantifiable benefits, however, are apparent. Effective enforcement of the Nation's cabotage laws has proven critical for several reasons. The cabotage laws help retain skilled merchant mariners, providing a strong U.S. merchant marine available to operate U.S. vessels in time of national emergency. In addition, these laws play a key role in preserving domestic capacity for shipbuilding and repair. Finally, in these days of heightened concerns about national security, it is evermore important to maintain transparency regarding vessel ownership and control.

Since 1996, only 87 entities have applied to document a vessel using the lease-financing provisions and, of those, only 30 have engaged in a charter back to the vessel owner or an entity related to the vessel owner. Accordingly, we expect the requirement for MARAD review to impact a very limited number of entities seeking to document a vessel with a coastwise endorsement. Furthermore, we believe that few, if any, of the 30 foreign-owned entities that own vessels documented under the lease-financing provisions that charter back to affiliates qualify as small businesses as defined by the Small Business Administration (see below).

Small Entities

Coast Guard

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether its proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Currently, there are 87 entities that have had their coastwise endorsements approved under the lease-financing option. We anticipate that a minimal number of these entities could be adversely affected by this rule and would have to resort to using mortgage, rather than lease, financing.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Coast Guard's docket at the Docket Management Facility. (*See* **ADDRESSES.**) In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Maritime Administration

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), MARAD has considered whether its proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Currently, there are 87 entities that have had their coastwise endorsements approved under the lease-financing option. We anticipate that a minimal number of these entities would be required to submit charters and other documents to MARAD for review, but only a subset of these entities would not be allowed to enter into time charters.

Therefore, MARAD certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Coast Guard's docket at the Docket Management Facility. (*See* **ADDRESSES.**) In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard and MARAD want

to assist small entities in understanding these proposed rules so that they can better evaluate their effects on them and can participate in these rulemakings. If the rules would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Patricia Williams, Deputy Director, National Vessel Documentation Center (NVDC), Coast Guard, telephone 304–271–2506 or Rita Thomas, Small Business Specialist, Maritime Administration, telephone 202–366–5757.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard or the Maritime Administration, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

Coast Guard

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Maritime Administration

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The information collection requirements of the rule are addressed in the previously approved OMB collection titled "Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen Owned Documented Vessels" (OMB 2133–0006).

Title: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen Owned Documented Vessels

Summary of the Collection of Information: Persons operating documented vessels under a demise charter and using lease financing would be required to provide the information related to the identity of the vessel owner, bareboat charterer and time charterer as well as copies of the time charter.

Need for Information: The required information is needed in order for MARAD to make the required approvals under section 9 of the Shipping Act, 1916, 46 App. U.S.C. 802(c), regarding transfers of any interest or control of a documented vessel to persons that are not Citizens of the United States.

Proposed Use of Information: The information related to the identity of the vessel owner, bareboat charterer and time charterer as well as copies of the time charter would be used to ensure that there is not an impermissible transfer of control to non-citizens of U.S.-flag coastwise qualified vessels.

Description of the Respondents: Persons operating documented vessels under a demise charter and using lease financing.

Number of Respondents: We estimate that less than five new respondents/responses will be added annually to the already approved collection. For purposes of this rulemaking the estimate of five responses is used.

Frequency of Response: Whenever a vessel that is documented pursuant to 46 U.S.C. 12106(e) for operation in the coastwise trade is chartered back to the vessel owner or an entity related to the vessel owner. We estimate the additional response to be less than five per year.

Burden of Response: The burden per response as previously approved in OMB 2133–0006 is estimated to be approximately two hours.

Estimate of Total Annual Burden: $213.60 annually.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. The Coast Guard and the Maritime Administration have analyzed these proposed rules under that Order and have determined that they do not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though these proposed rules would not result in such expenditures, both agencies do discuss the effects of their rules elsewhere in this preamble.

Taking of Private Property

These proposed rules would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

These proposed rules meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

Both agencies have analyzed these proposed rules under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. These rules are not economically significant rules and would not create

an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

These proposed rules do not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because they would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard and the Maritime Administration have analyzed these proposed rules under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that they are not "significant energy actions" under that order, although the Coast Guard's proposed rule is considered a "significant regulatory action" under Executive Order 12866. We expect that these rulemakings will not have any significant adverse effect on the supply, distribution, or use of energy, including a shortfall in supply, price increases, and increased use of foreign supplies. The Administrator of the Office of Information and Regulatory Affairs has not designated these rulemakings as significant energy actions. Therefore, they do not require a Statement of Energy Effects under Executive Order 13211.

We request your comments to assist us in identifying any likely significant adverse effects that these proposed rules may have on the supply, distribution, or use of energy. Submit your comments to the Docket Management Facility at the address under **ADDRESSES.**

Environment

Coast Guard

The Coast Guard analyzed its proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and has concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(d), of the Instruction, from further environmental documentation. This proposed rulemaking is administrative in nature and concerns requirements for application for a coastwise endorsement under 46 U.S.C. 12106(e). A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

Maritime Administration

MARAD has analyzed this proposed rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order 600–1, "Procedures for Considering Environmental Impacts," (50 FR 11606, March 22, 1985), the preparation of an Environmental Assessment and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations that clearly have no environmental impact.

List of Subjects

46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 221

Maritime carriers, Reporting and recordkeeping requirements, Vessels.

Coast Guard

46 CFR Chapter I

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110, 12106, 12120, 12122; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

2. In § 67.20, revise paragraphs (a)(6), (a)(9), (b), (c), (d), and (e) to read as follows:

§ 67.20 Coastwise endorsement for a vessel under a demise charter.

(a) * * *

(6) The ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels or by a member of the group of which the owner is a member.

* * * * *

(9) The person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of a U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter. For purposes of this section, a demise charterer is not considered to be the owner *pro hac vice* when the vessel is subject to a sub-charter to a member of the group of which the vessel's owner is a member, except when the vessel is engaged in carrying cargo owned by the vessel's owner or by a member of the group of which the vessel's owner is a member.

* * * * *

(b) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 and 46 U.S.C. 12106(e) before February 4, 2004, may continue to operate under that endorsement for 3 years after that date and may renew the document and endorsement during that period if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3);

(2) Deletion under § 67.171(a)(1) through (a)(6); or

(3) Cancellation under § 67.173.

(c) A vessel under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible for documentation with a coastwise endorsement under § 67.19 and 46 U.S.C. 12106(e). The vessel may continue to operate under that endorsement for 3 years after the initial issuance of that endorsement and may renew the document and endorsement during that period if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3);

(2) Deletion under § 67.171(a)(1) through (a)(6); or

(3) Cancellation under § 67.173.

(d) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in the coastwise trade before February 4, 2004, may continue to operate in that trade for 3 years after that date unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;
(4) The barge is placed under foreign flag;
(5) Any owner of the barge ceases to be a citizen within the meaning of subpart C of this part; or
(6) The barge ceases to be capable of transportation by water.
(e) A barge under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible to operate in the coastwise trade under 46 U.S.C. 12106(e) and 12110(b). The barge may continue to operate in the coastwise trade for 3 years after its initial entry into service unless—
(1) The ownership of the barge changes in whole or in part;
(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;
(3) The State of incorporation of any corporate owner of the barge changes;
(4) The barge is placed under foreign flag;
(5) Any owner of the barge ceases to be a citizen within the meaning of subpart C of this part; or
(6) The barge ceases to be capable of transportation by water.
* * * * *

Dated: January 29, 2004.

Thomas H. Collins,

Admiral, Coast Guard Commandant.

Maritime Administration

46 CFR Chapter II

For the reasons discussed in the preamble, the Maritime Administration proposes to amend 46 CFR part 221 as follows:

PART 221–REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

1. The authority citation for part 221 continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195, 46 U.S.C. chs.301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

§ 221.11 [Amended]

2. In § 221.11(a) introductory text, after the words "United States Code," add the words "as limited by § 221.13(c),".

3. In § 221.13, in paragraph (a)(1)(iii), remove the period and add, in its place, "; and"; and add new paragraphs (a)(1)(iv) and (c) to read as follows:

§ 221.13 General approval.

(a) * * *
(1) * * *
(iv) As limited by paragraph (c) of this section for vessels documented with a coastwise endorsement pursuant to 46 U.S.C. 12106(e).
* * * * *

(c) *Lease financing.* A Person operating, under a demise charter, a Vessel that is documented pursuant to 46 U.S.C. 12016(e) must obtain the approval of the Maritime Administrator required by 46 App. U.S.C. 808(c)(1) for the sale, lease, Charter, delivery, or any other manner of Transfer back to the vessel owner, a member of the owner's group (as the word "group" is defined in 46 CFR 67.3), or an officer, director, or shareholder of the owner or a member of the owner's group. As defined in 46 CFR 67.3, the word "group" includes the owner, the owner's parent, and all subsidiaries and affiliates of the parent; and the word "affiliate" means a Person that is less than 50 percent owned or controlled by another Person.

By Order of the Maritime Administrator.

Dated: January 22, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–2231 Filed 1–30–04; 11:34 am]
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Part IV

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 294–0432, FRL–7617–6]

Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the "2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller," submitted on August 19, 2003, and Amendments to that plan submitted on December 30, 2003, as meeting the Clean Air Act (CAA or the Act) requirements applicable to the San Joaquin Valley, California PM–10 nonattainment area (SJV). The SJV violates the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM–10) and is classified as a serious PM–10 nonattainment area.

As a serious PM–10 nonattainment area, the State must submit to EPA a plan that provides for, among other things, the implementation of best available control measures (BACM). In addition, because the serious area attainment deadline, December 31, 2001, has passed, the plan must provide for expeditious attainment of the PM–10 NAAQS and for an annual reduction in PM–10 or PM–10 precursors emissions of not less than five percent until attainment.

DATES: Comments on this proposal must be received by March 5, 2004.

ADDRESSES: Mail comments to Doris Lo, Planning Office (AIR2), EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments may also be submitted electronically to *lo.doris@epa.gov* or through hand delivery/courier.

A copy of the docket is available for public inspection at EPA's Region 9 at 75 Hawthorne Street, San Francisco, California, 94105, office during normal business hours.

Electronic Availability

This rulemaking and the TSD for this rulemaking are available as electronic files on EPA's Region 9 Web site at *www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Doris Lo, Planning Office (AIR2), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105. (415) 972–3959, e-mail: *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Summary of Today's Proposal

EPA is proposing to approve the "2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller," submitted by the State of California to EPA on August 19, 2003, and Amendments to that plan submitted on December 30, 2003,[1] as meeting the CAA's requirements for serious PM–10 nonattainment areas, including the requirements of CAA section 189(d) for serious areas that have failed to meet their attainment dates. Specifically, we are proposing to approve the following elements of the Plan:

- Motor vehicle budgets for transportation conformity;
- Emissions inventories for PM–10 and PM–10 precursors;

[1] The Amendments to the 2003 PM–10 Plan supersede some portions of the 2003 PM–10 Plan and also add to it. References hereafter to the "SJV 2003 PM–10 Plan" or "the Plan" mean the 2003 Plan submitted on August 19, 2003, as amended by the December 30, 2003, submittal.

• A demonstration that reasonably available and best available control measures (RACM and BACM) will be expeditiously implemented for all significant sources of PM–10 and PM–10 precursors;

• A demonstration that attainment will be achieved as expeditiously as practicable;

• A demonstration that the CAA section 189(d) five percent requirement is met; and

• A demonstration that reasonable further progress (RFP) and quantitative milestones will be achieved.

Final action approving the RACM/BACM demonstration for fugitive dust sources regulated by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) Regulation VIII would terminate all sanction, Federal implementation plan (FIP) and rule disapproval implications of our February 26, 2003, action on Regulation VIII. 68 FR 8830.

We describe our proposed actions and provide an evaluation of the Plan and Plan Amendments below. Additional details of our evaluation may be found in the technical support document (TSD) for this proposed rule ("EPA's Technical Support Document for the San Joaquin Valley, California, 2003 PM–10 Plan and 2003 PM–10 Plan Amendments," January 27, 2004). A copy of the TSD can be downloaded from our Web site or obtained by e-mailing, calling or writing the contact person listed above.

II. PM–10 Air Quality Planning in the SJV Area

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[2] Pub. L. 549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (1991). On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas including the SJV, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. *See* 56 FR 11101 (March 15, 1991). EPA codified the boundaries of the SJV nonattainment area at 40 CFR 81.305.[3]

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishes the area's initial attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the SJV, were initially classified as moderate nonattainment. On December 24, 1991, California submitted a moderate area PM–10 Plan for the SJV which demonstrated that the area could not attain the PM–10 NAAQS by the moderate area attainment date, December 31, 1994. EPA has not acted on any portion of the moderate area plan.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM–10 NAAQS by that deadline. On January 8, 1993 (58 FR 3337), EPA made such a determination and reclassified the SJV as serious.

As a serious nonattainment area, the attainment deadline for the SJV is as expeditiously as practicable but no later than December 31, 2001. CAA section 188(c)(2). Section 189(b)(2) of the Act required that the State submit state implementation plan (SIP) revisions for the SJV addressing CAA section 189(b) and (c) by August 8, 1994, and February 8, 1997. The State made these required serious area submittals but withdrew them on February 26, 2002. As a result, on February 28, 2002, EPA made a finding of failure to submit (67 FR 11925).

On July 23, 2002, EPA found that the SJV failed to attain the annual and 24-hour PM–10 standards by December 31, 2001 (67 FR 48039). For serious areas failing to meet their applicable attainment deadlines, section 189(d) of the CAA requires states to "submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction of PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area."[4] On March 7, 2003, EPA made a finding of failure to submit the 5% attainment plan for the San Joaquin Valley which was due on December 31, 2002 (68 FR 13840).

On August 19, 2003, California submitted the "2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller." On December 30, 2003, California submitted the Amendment to the 2003 PM–10 Plan. California and the SJVUAPCD developed and adopted these SIP revisions in order to address the CAA requirements in section 189(b)–(d).

On August 22, 2003, EPA found the 2003 PM–10 Plan complete (August 22, 2003, letter from Jack P. Broadbent to Catherine Witherspoon) pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, Appendix V. On January 9, 2004, EPA found the Amendments to the 2003 PM–10 Plan complete (January 9, 2004, letter from Deborah Jordan to Catherine Witherspoon, California Air Resources Board) pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, appendix V.

III. Overview of the CAA's Planning Requirements for the SJV Serious PM–10 Nonattainment Area

The SJV is a serious PM–10 nonattainment area that has failed to meet the applicable attainment date, December 31, 2001. Such areas are subject to CAA section 189(d) which, as discussed above, requires the submittal, within 12 months of the applicable attainment date, of an attainment plan which provides for a 5% annual reduction of PM–10 or PM–10 precursors. In addition, the SJV must address all of the relevant CAA requirements for moderate and serious areas that have not been previously addressed.

The requirements for moderate and serious PM–10 nonattainment areas are found in section 189 of the CAA, and the general planning and control requirements for nonattainment plans are found in CAA sections 110 and 172. EPA has issued a General Preamble[5] and Addendum to the General Preamble[6] describing our preliminary

[2] EPA revised the NAAQS for PM–10 on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples, averaged over a three year period, is equal to or less than 50 micrograms per cubic meter (μg/m³). The 24-hour PM–10 standard of 150 μg/m³ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. *See* 40 CFR 50.6 and 40 CFR part 50, appendix K.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

[3] The San Joaquin Valley PM–10 nonattainment area includes the following counties in California's central valley: Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera and Merced.

[4] The section 189(d) requirements are also referred to hereafter as the "5% attainment plan," or the "section 189(d) 5% requirement."

[5] "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

[6] "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act

Continued

views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for PM–10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas. EPA has also issued other guidance documents related to PM–10 plans which are cited as necessary when EPA discusses the details of the 2003 PM–10 Plan below. In addition, EPA is addressing the adequacy of the motor vehicle budgets for transportation conformity (CAA section 176(c)) in this proposed plan approval. The PM–10 plan requirements addressed by this proposed approval for the SJV are summarized below.

A. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule (40 CFR part 51, subpart T and part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Once a SIP that contains motor vehicle emissions budgets has been submitted to EPA, and EPA has found it adequate, these budgets are used for determining conformity: emissions from planned transportation activities must be less than or equal to the budgets.

B. Emissions Inventories

CAA section 172(c)(3) requires that an attainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants.

C. Best Available Control Measures for Sources of PM–10

CAA section 189(b)(1)(B) requires provisions to assure that best available control measures (BACM), including the best available control technology (BACT) for stationary sources, for the control of PM–10 shall be implemented no later than 4 years after the date a nonattainment area is reclassified as serious.

D. Reasonably Available Control Measures for Sources of PM–10

When a moderate area is reclassified to serious, the requirements to implement reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), in CAA sections 172(c)(1) and 189(a)(1)(C) remain. Thus, a serious area PM–10 plan must also provide for the implementation of RACM and RACT to the extent that the RACM and RACT requirements have not been satisfied in the area's moderate area plan.

E. Major Stationary Sources of PM–10 Precursors

CAA section 189(e) requires that control requirements applicable to major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standards in the area.

F. Section 189(d) Attainment Demonstration and 5% Requirement

For areas which do not attain the PM–10 standards by the applicable attainment date, CAA section 189(d) requires the submittal of plan revisions which provide for attainment (attainment demonstration) and an annual 5% reduction in PM–10 or PM–10 precursors. These plan revisions must be submitted within 12 months of the applicable attainment date.

The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice. EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." CAA sections 179(d)(3) and 189(d).

G. Reasonable Further Progress and Quantitative Milestones

CAA sections 172(c)(2) requires the plan to demonstrate RFP as defined in section 171(1). Section 189(c)(1) requires the plan to contain quantitative milestones which will be achieved every 3 years and which will demonstrate that RFP is being met.

IV. The 2003 PM–10 Plan's Compliance With the CAA's Requirements

An evaluation of the 2003 PM–10 Plan against the CAA requirements is provided below. Additional information may be found in the TSD for this proposed plan approval.

A. Overview of the Plan's NO_X/PM Attainment Strategy

The 2003 PM–10 Plan relies on reductions from sources of oxides of nitrogen (NO_X), a PM–10 precursor, and directly emitted PM–10 sources to achieve attainment ("NO_X/PM strategy"). Other PM–10 precursors for the SJV include volatile organic compounds (VOC), oxides of sulfate (SO_X) and ammonia (NH_3). The California Air Resources Board (CARB or the State) and SJVUAPCD have examined the effects of controlling VOC, SO_X and NH_3 and have determined that additional VOC controls will not lead to PM–10 reductions throughout the SJV, that the SO_X inventory is too small to have an appreciable impact on PM–10 reductions, and that there is too much uncertainty regarding the effects of ammonia controls. (*See* pages ES–15, ES–16 and 7–3 of the 2003 PM–10 Plan.) Thus, the State and District believe that the NO_X/PM strategy is currently the most effective and expeditious strategy for attaining the PM–10 standards in the SJV. Additional technical information from the California Regional PM–10/PM–2.5 Air Quality Study (CRPAQS) is expected in 2005. The District has made an enforceable commitment, discussed further below, to re-evaluate the 2003 PM–10 Plan with the results of CRPAQS and to submit a new plan to EPA by March 2006. In the absence of the CRPAQS results, EPA concurs with the 2003 PM–10 Plan's NO_X/PM strategy. Therefore, for the purposes of 189(b)(1)(B) and 189(e) we are proposing to determine that sources of the PM–10 precursors, VOC, SO_X and NH_3, do not contribute significantly to PM–10 levels which exceed the standard in the SJV.

B. Transportation Conformity and Motor Vehicle Emissions Budgets

One of the primary tests for conformity is to show that transportation plans and improvement programs will not result in motor vehicle emissions greater than the levels needed to make progress toward and to meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and to meet the air quality standards are set in the area's applicable SIP and are known as the "motor vehicle emissions budgets." Emissions budgets are established for specific years and specific pollutants and precursors. *See* 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision may be used in a conformity determination, we must

Amendments of 1990," 59 FR 41998 (August 16, 1994).

first determine that it is adequate. The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999, memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision") and in our proposed rule of June 30, 2003 (68 FR 38974). Applicability of emission trading between conformity budgets for conformity purposes in described in 40 CFR 93.124(c).

EPA must positively affirm that the budgets contained in the SIP are adequate before budgets can be used for transportation conformity. Once adequate budgets are established, transportation plans will then need to conform with those budgets. The determination of whether transportation plans conform to SIPs is outside the scope of this rulemaking. This rulemaking does, however, address whether the budgets found in the 2003 PM–10 Plan are adequate and approvable.

1. CARB Methodology for Estimating PM–10 in the Emissions Budgets

CARB's mobile source emission model, EMFAC2002, was used to estimate direct PM–10 and NO_X emissions from motor vehicles in the 2003 PM–10 SIP. EMFAC2002 was approved by EPA on April 1, 2003 (FR 6815722), for use in SIPs and conformity analyses. EMFAC2002 produces emissions for a wide range of motor vehicles (passenger cars, eight different classes of trucks, motorcycles, buses and motor homes) for calendar years out to 2040. Particulate emissions include tire and brake wear as well vehicle exhaust and evaporative emissions.

The methodology used in the 2003 PM–10 SIP to estimate fugitive dust (*e.g.* paved and unpaved road emissions) is consistent with EPA's AP–42 (5th Revision, 1995) model for estimating paved road dust emissions. However, California-specific inputs to the AP–42 equation, such as silt loading and vehicle weight, have been incorporated. A rainfall correction factor, as provided in EPA's latest version of the AP–42 methodology has also been incorporated into the methodology. Reference documents to the 2003 PM–10 Plan that contain details regarding the methodology are R1: Detailed Annual Emissions Inventories and R2: Detailed Seasonal Emissions Inventories (2003 PM–10 Plan, reference documents on cd-rom). For unpaved roads, a California specific emission factor has been developed from unpaved road emission tests performed primarily in the SJV and is approximately 2 lbs. PM–10/VMT.

CAA section 172(c)(3) and 40 CFR 51.112(a)(1) require that SIP inventories be based on the most current and applicable models that are available at the time the SIP is developed. CAA section 176(c)(1) requires that the latest emissions estimates be used in conformity analyses. EPA approves models that fulfill these requirements. We are proposing to approve the methodologies used in the 2003 PM–10 Plan to calculate PM–10 emissions from paved and unpaved roads for the 2003 PM–10 Plan and also for use in future transportation conformity determinations in the SJV.

2. Adequacy of the Plan's Budgets

The 2003 PM–10 Plan includes county by county subarea motor vehicle emissions budgets for 2005, 2008 and 2010 for direct PM–10 and NO_X. The budgets are summarized in Table 3–2 of the Plan, "Motor Vehicle Emission Subarea Budgets, (tons per average annual day)" and below. The direct PM–10 budgets include emissions of reentrained dust from motor vehicle travel on paved and unpaved roads, vehicular exhaust, vehicle brake and tire wear, and emissions from highway and transit project construction. The emissions budgets for NO_X include only vehicular exhaust. Since the 2003 PM–10 Plan does not consider VOC to be a significant contributor to the PM–10 nonattainment problem, in accordance with 40 CFR 93.102(b)(2)(iii), no VOC budgets are included. Additional details regarding the budgets are presented in "2005 Motor Vehicle Emissions Budgets (tons per average annual day), Date printed: 7/24/2003; SJV PM Plan Budget Derivations. xls; SJV PM Budget Derivation, July 8, 2003," which is part of the 2003 PM–10 Plan submittal.

On August 27, 2003, EPA announced receipt of the 2003 PM–10 Plan on the Internet and requested public comment on the Plan's emissions budgets by September 26, 2003. No comments were received. EPA's analysis for the 2003 PM–10 Plan's PM–10 and NO_X motor vehicle budgets is provided in the TSD.

Based on our evaluation of the criteria outlined in section 93.118(e) of the conformity rule, EPA finds the PM–10 and NO_X motor vehicle emissions budgets contained in the 2003 PM–10 Plan (and the table below) adequate and proposes to approve them. EPA proposes to approve the budgets because they come from a SIP which EPA concludes demonstrates timely attainment and the budgets are consistent with all of the control measures assumed in the attainment demonstration. We also find adequate and propose to approve the individual county level subarea budgets for NO_X and PM–10, as shown in the table below, consistent with section 93.124(e), which allows for a nonattainment area with more than one Metropolitan Planning Organization (MPO) to establish subarea emission budgets for each MPO or make a collective conformity determination for the entire nonattainment area. Note that, if an individual MPO cannot show conformity to their individual county budget, then the remaining MPOs in the SJV cannot make any new conformity determinations.[7] An adequate or approved motor vehicle emissions budget must be used for transportation conformity purposes. As mentioned earlier, the county subarea motor vehicle emissions budgets that EPA is proposing to approve are listed in the table below.

[7] When examined together, section 93.102(b), which requires conformity determinations in all nonattainment areas, and section 93.109(a), which requires that all of the requirements of the conformity rule be met, indicate that subareas cannot find conformity until all subareas conform. Consequently, it is the interpretation of EPA and the Federal Highway Administration that if one subarea is unable to demonstrate conformity, the other subareas cannot determine conformity either. That is, one MPO cannot determine conformity unless the other subareas included in the implementation plan are in conformity. The current transportation improvement program (TIP) and conformity determination for the other subareas would not lapse immediately and the projects in the current TIP for these subareas would be allowed to go forward. Those other subareas simply could not make a new conformity determination until the subarea that originally lapsed was found to conform.

MOTOR VEHICLE EMISSIONS SUBAREA BUDGETS

[Tons/day]

County	SJV 2003 PM–10 Plan					
	2005		2008		2010	
	PM–10	NO_X	PM–10	NO_X	PM–10	NO_X
Fresno	14.1	42.6	13.3	36.4	16.2	29.7
Kern	10.6	38.8	10.7	34.2	10.8	28.4
Kings	5.6	7.5	5.6	6.5	6.7	5.4
Madera	4.3	9.9	4.3	9.1	4.5	7.8
Merced	5.5	15.3	5.2	12.5	5.3	9.9
San Joaquin	9.0	28.9	9.0	23.4	9.2	18.3
Stanislaus	6.5	22.5	6.1	18.7	6.1	14.9
Tulare	8.7	23.6	7.9	20.1	8.9	16.4
Total	64.3	189.1	62.1	160.9	67.7	130.8

At the request of CARB and based on the SJVUAPCD's commitment to update the SIP by March 31, 2006, using improved inventories and air quality modeling,[8] we are proposing to limit this approval to last only until the effective date of our adequacy findings for new replacement budgets. For further discussion of the rationale for, and the effect of, this limitation, please see our promulgation of a limitation on motor vehicle emission budgets associated with various California SIPs, at 67 FR 69139 (November 15, 2002).

3. Trading Mechanism

Transportation Conformity is demonstrated for each county in the SJV when emissions for both PM–10 and NO_X are estimated to be below the motor vehicle emission budgets for each pollutant for all analysis years before and including 2010. However, for analysis years beyond 2010, the PM–10 Plan allows emissions to be traded from NO_X to PM–10 budgets. Section 93.124(c) allows trading among budgets for the purposes of conformity if there is an approved mechanism in the SIP to allow trading to take place. The provision in section 93.124(c) states that:

"[a] conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades."

Page 3–16 to 3–17 of the 2003 PM–10 Plan provides a general discussion of how a trading mechanism could be used for determining transportation conformity with the plan's budgets after 2010. On December 30, 2003, the District provided, as part of the 2003 PM–10 Plan Amendment, additional information which provides details on how the trading mechanism will be implemented (December 18, 2003, letter from David Crow to Deborah Jordan). The trading mechanism will be implemented with the following criteria. The trading applies only to:

- Analysis years after the 2010 attainment year.
- On-road mobile emission sources.
- Trades using vehicle NO_X emission reductions in excess of those needed to meet the NO_X budget for that county.
- Trades in one direction from NO_X to direct PM–10.
- A trading ratio of 1.5 tpd NO_X to 1 tpd PM–10.[9]
- Transportation conformity determinations in San Joaquin Valley for purposes of showing conformity to the budgets in the 2003 PM–10 attainment demonstration.

Not allowed are:

- Trading between counties/subarea budgets.
- Trading for any pollutant other than direct PM–10 and the PM–10 precursor NO_X.
- Trading with sources other than on-road emission sources.
- Trading that would interfere with meeting the NO_X budget.
- Use of the mechanism to supplement the NO_X budget with excess reductions in the direct PM–10 budget.

In practice, in a conformity analysis for years after 2010, an MPO in the SJV would follow these steps:

- Generate the estimates of NO_X and PM–10 emissions from the planned transportation network, using procedures consistent with the conformity rule (40 CFR part 93).
- Compare these estimates to the appropriate SIP budgets.
- If one or both of the budgets are not met, identify and evaluate potential control measures that could achieve additional reductions (*e.g.*, feasibility analysis). This step could include examination of expanded implementation of control measures similar to those used in the SIP (*e.g.*, paving unpaved roads) if included and funded in the Regional Transportation Plan.
- If, after including reductions from additional measures, the direct PM–10 budget still cannot be met, adjust (*i.e.*, increase) the PM–10 subarea budget by trading from the NO_X budget. This trade from the NO_X subarea budget to the PM–10 subarea budget can only occur if the estimated emissions of NO_X from the planned transportation network are less than the NO_X subarea budget. The 1.5 tpd NO_X to 1 tpd PM–10 ratio would be used, as follows, to determine the NO_X reductions needed to offset the excess direct PM10 emissions:

(PM–10 estimate − PM–10 budget) * 1.5 = tpd of NO_X reductions needed to offset excess PM–10

Based on this calculation, the NO_X budget is decreased and the PM–10 budget is increased for this particular conformity determination in the subarea. A subarea has demonstrated conformity if, after trading, the estimates of NO_X and PM–10 emissions from the planned transportation network are at or below the adjusted NO_X and direct PM–10 budgets. For each analysis year after 2010, and in

[8] *See* page 2 of the August 19, 2003, letter from Catherine Witherspoon to Wayne Nastri, transmitting the 2003 PM–10 Plan.

[9] The 1.5 tpd NO_X to 1 tpd direct PM–10 ratio is consistent with the attainment modeling supporting the 2003 PM–10 Plan's attainment demonstration. The SJV has made an enforceable commitment to conduct a mid-course review and to submit a new plan by March 31, 2006. The new plan will include a new attainment demonstration and if the NO_X/PM–10 conversion ratio needs to be adjusted in the attainment demonstration, it must also be adjusted for the conformity budget trading ratio. *See* section IV.F. below.

each subsequent conformity determination, the transportation agency must repeat these steps to determine whether the budgets can be met, or whether they need to be adjusted using this trading mechanism. Once the U.S. Department of Transportation (USDOT) has approved a conformity finding which relied upon the trading mechanism, the transportation planning agency cannot necessarily rely on that trading scenario for future conformity findings. The PM–10 and NO_X budgets will return to the subarea emission budgets in the 2003 PM–10 SIP. Any new conformity determination would have to repeat the steps identified above to determine if further trading is appropriate.

EPA believes that the 2003 PM–10 Plan has provided an approvable trading mechanism for determining transportation conformity after 2010. EPA is proposing to approve the trading mechanism and all of the criteria included in the letter submitted as part of the 2003 PM–10 Plan as enforceable components of the program.

C. Emissions Inventories

Section 172(c)(3) of the CAA requires all plan submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area. Since the San Joaquin Valley exceeds both the 24-hour and annual PM–10 standards, representative emission inventories are needed for both standards. The District chose the year 1999 as the base year for the 2003 PM–10 Plan since it was the most complete emission inventory available. This base year inventory meets the CAA requirement for a comprehensive, accurate and current inventory and is used as the basis for forecasting future year inventories and for developing average annual, seasonal and modeling inventories. (*See* Chapter 3, 2003 PM–10 Plan.)

The 2003 PM–10 Plan's average annual inventory represents the emissions on an average day in a year and is based on the SJV's yearly emissions. The average annual inventory is used to evaluate the annual PM–10 problem.

The 2003 PM–10 Plan also include seasonal inventories for fall and winter. The seasonal inventories were developed to evaluate the 24-hour PM–10 problem.

EPA is proposing to approve the inventories in the 2003 PM–10 Plan as meeting the CAA 172(c)(3) requirement. A more detailed discussion of the Plan's inventories can be found in the TSD.

D. Implementation of Reasonably and Best Available Control Measures

CAA section 189(b)(1)(B) requires serious area PM–10 plans to provide for the implementation of BACM, including BACT, within four years of reclassification to serious.[10] For the SJV, this date was January 8, 1997. Since that date has passed, BACM must now be implemented as expeditiously as practicable. *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). The General Preamble and Addendum provide EPA's preliminary guidance on how to determine what is a BACM level of control. The Addendum provides the following guidance in discussing BACM:

- BACM is considered to be a higher level of control than RACM[11] and is defined as being, among other things, the maximum degree of emissions reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010, 42013.
- BACM should emphasize prevention rather than remediation (*e.g.*, preventing track out at construction sites rather than simply requiring clean up of tracked out dirt). Addendum at 42011, 42013.
- BACM must be implemented for all categories of sources in serious areas unless the State adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the PM–10 standards. A source category is presumed to contribute significantly to a violation of the 24-hour NAAQS if its PM–10 impact at the location of the expected violation would exceed 5 $\mu g/m^3$. Likewise, a source category will be presumed to contribute to a violation of the annual NAAQS if its PM–10 impact at the time and location of the expected violation would exceed 1 $\mu g/m^3$. Addendum at 42011, 42012.
- In contrast to RACM, BACM determinations are to be based more on the feasibility of implementing measures rather than on an analysis of the area's attainment needs. Addendum at 42012.

The Addendum then discusses the following steps for determining BACM. Addendum at 42012–42014.

- Inventory the sources of PM–10 and PM–10 precursors.
- Determine which source categories are significant by modeling their impacts on the 24-hour and annual PM–10 standard.
- Evaluate alternative control techniques and their technological feasibility.
- Evaluate the costs of control measures or their economic feasibility.

Once these analyses are complete, the BACM must be turned into an enforceable rule or commitment to ensure BACM implementation. We use these steps as guidelines in our evaluation of the 2003 PM–10 Plan below. Finally, the Addendum provides examples of determining BACM and also discusses the selection of BACT for stationary sources.[12,13]

1. Steps 1 and 2: Determining Significant Sources of PM–10 and PM–10 Precursors

The first step in determining BACM is to develop a detailed emissions inventory of source categories for PM–10 and PM–10 precursors that can be used with modeling to determine which categories have a significant impact on the ambient PM–10 levels. The second step is to use modeling to identify those source categories having a greater than *de minimis* impact on PM–10 concentrations. Addendum at 42012.

The development of the detailed emissions inventory of source categories for PM–10 and PM–10 precursors is discussed in a section IV.C. above. The

[10] As with RACM and RACT, BACT is a subset of the overarching BACM requirement. BACT generally refers to the technological control measures which apply to stationary sources. Addendum at 42008 to 42009.

[11] CAA section 189(a)(1)(C) requires implementation of RACM for moderate PM–10 nonattainment areas. As noted above, a serious area PM–10 plan must also provide for the implementation of RACM to the extent that the RACM requirement has not been satisfied in the area's moderate area plan.

However, we do not normally conduct a separate evaluation to determine if a serious area plan's measures meet the RACM as well as BACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement as generally subsuming the RACM requirement (*i.e.*, if we determine that the measures are indeed the "best available," we have necessarily concluded that they are "reasonably available"). Consequently, our proposed approval of the 2003 PM–10 Plan's provisions relating to the implementation of BACM also constitutes a proposed finding that the Plan provides for the implementation of RACM and references to BACM in the discussion of the 2003 PM–10 Plan below are intended to include RACM.

[12] CAA sections 189(b)(1)(B) and 189(e) require BACT for stationary sources of PM–10 and PM–10 precursors. BACT is determined on a case-by-case basis and should reflect "* * * the maximum degree of emission reduction of each pollutant subject to regulation (PM–10 and/or PM–10 precursors), taking into account energy, environmental, and economic impacts and other costs. * * *" Addendum at 42014.

[13] Additional discussion on BACM implementation is provided in EPA's proposed rule for the Maricopa County PM–10 Nonattainment Area Serious Area Plan for Atttainment of the 24-Hour PM–10 Standard. 66 FR 50252, 50281 (October 2, 2001).

District used receptor modeling to determine the contribution levels (in μg/m³) from PM–10 and NO_X sources on the worst exceedance days for both the annual and 24-hour PM–10 standards.[14,15] The District then compared the emissions (tons) to the contribution levels (μg/m³) for both the annual and 24-hour PM–10 and NO_X emissions (tons) on a county by county basis. The District did the comparisons on a county by county basis because they believe that localized emissions are more important because most of the worst PM–10 exceedances occur on stagnant days. The county by county approach also ensures a more stringent *de minimis* level since county emissions are lower than Valley-wide emissions. The purpose of the comparisons was to determine the tons of PM–10 and NO_X that contribute to 1 μg/m³ for the annual standard and 5 μg/m³ for the 24-hour standard on a county by county basis. The lowest PM–10 and NO_X tonnage values between both the annual and 24-hour values were then selected as the *de minimis* levels. (*See* SJV PM–10 Plan, pages 4–14 to 4–15 and Appendix G, pages G–4 to G–12).

The result of the *de minimis* analysis is the list of significant source categories found in Table G–9 of Appendix G of the 2003 PM–10 Plan. The CAA requires the expeditious implementation of BACM demonstration for all significant source categories. Each of the significant source categories is discussed below.

2. Steps 3 and 4: BACM for NO_X and PM–10 Significant Source Categories

The third and fourth steps involve determining the technical and economic feasibility of potential control measures for each of the significant source categories. Once BACM are identified, they must be implemented as expeditiously as practicable through an enforceable rule or commitment. A discussion of BACM for each of the significant PM–10 and NO_X source categories identified in the 2003 PM–10 Plan follows. EPA is proposing to find that the commitments and rules for the significant source categories below meet the RACM/BACM requirements of CAA section 189(a)(1)(C) and (b)(1)(B).

a. *State Sources.* The 2003 PM–10 Plan lists several significant source categories as being under State authority (2003 PM–10 Plan, page 4–17, Table 4–7). The State of California has unique authority under the Clean Air Act to adopt regulations to control emissions from new motor vehicles and engines and from nonroad engines, except for locomotives and engines used in farm and construction equipment which are less than 175 horsepower. CAA sections 209(b)(1) and 209(e)(2). In order for California to adopt such regulations, however, several determinations must be made, including a determination that the standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards (CAA sections 209(b) and (e)). Following granting of a waiver, compliance with the State new motor vehicle or engine standards is treated as compliance with applicable Federal standards (CAA section 209(b)(3)). Absent a waiver, the corresponding Federal mobile source standards apply.

In exercising its special authority under CAA section 209, California has over the past 30 years adopted increasingly stringent emissions standards for those mobile source categories that are not federally preempted, keeping pace with the development of advanced control technologies and cleaner fuels. In recent years, these adoptions have included the following measures:

(1) California Heavy-Duty Diesel Vehicle Standards, adopted 4/23/98—*www.arb.ca.gov/regact/2004/2004.htm*;

(2) Large Off-Road Engine Regulations adopted 10/22/98—*www.arb.ca.gov/regact/lore/lore.htm*;

(3) Low-Emission Vehicle (LEV) 2 and CAP 2000 California Exhaust and Evaporative Emissions Standards, adopted 11/5/98—*www.arb.ca.gov/regact/levii/levii.htm*;

(4) 1997 and Later Off-Highway Recreational Vehicles and Engines Standards, adopted 12/10/98—*www.arb.ca.gov/regact/recreat/recreat.htm*;

(5) Exhaust Emission Standards for On-Road Motorcycles, adopted 12/10/98—*www.arb.ca.gov/regact/motorcyc/motorcyc.him*;

(6) Off-Road Compression Ignition Engines Standards, adopted 1/27/00—*www.arb.ca.gov/regact/ciengine/ciengine.htm*;

(7) Transit Bus Standards, adopted 1/27/00 and revised 10/24/02—*www.arb.ca.gov/regact/bus/bus.htm* and *www.arb.ca.gov/regact/bus02/bus02.htm*;

(8) Heavy-Duty Diesel Engine Standards for 2007 and Later, adopted 10/25/01—*www.arb.ca.gov/regact/HDDE2007/HDDE2007.htm*;

(9) Spark-Ignition Inboard and Sterndrive Marine Engines, adopted 7/26/01—*www.arb.ca.gov/regact/marine01/marine01.htm*;

(10) On-Board Diagnostic II Regulations, adopted 4/25/02—*www.arb.ca.gov/regact/obd02/obd02.htm*; and

(11) LEV II 2002 Heavy-Duty Otto Cycle Engine Standards, adopted 11/14/02—*www.arb.ca.gov/regact/hevhdg02/levhdg02.htm*.

Many of the State's regulations have features that are more stringent than the Federal counterpart. For example, California's 1998 amendments to the State's regulations for 280cc and larger motorcycles apply stringent exhaust emission standards: 1.4g/km for the 2004 model year and 0.8g/km for the 2008 model year. EPA issued motorcycle standards in December 2003 (*http://www.epa.gov/otaq/roadbike.htm#final*). These new Federal standards were patterned after California's, but impose the same exhaust emission limits two years later than California (*i.e.*, in 2006 and 2010) and do not match California's controls on evaporative emissions. Thus, the requirements for this source category applicable within the SJV exceed even the stringent national requirements in certain respects. On the other hand, EPA's new regulations set stringent limits on the engines smaller than 50cc, a category not yet regulated by California. These national limits for scooters and mopeds will apply in the SJV in 2006, in accordance with the new EPA rule.

In addition, CARB has adopted more stringent fuel regulations than nationally required. These regulations apply to:

(1) Gasoline—Phase III California Reformulated Gasoline regulations (*http://www.arb.ca.gov/fuels/gasoline/gasoline.htm*);

(2) Diesel fuel regulations for motor vehicles (*http://www.arb.ca.gov/fuels/diesel/diesel.htm*); and

(3) Liquefied petroleum gas and other alternative fuel regulations for motor vehicles (*http://www.arb.ca.gov/fuels/altfuels/altfuels.htm*).

Again, California's fuels programs have elements that are more stringent than National requirements and are in no case less stringent than EPA standards. For example, California applies its reformulated gasoline requirements on a statewide basis in order to maximize benefits both within and outside areas where the Clean Air

[14] The 2003 PM–10 Plan addresses *de minimis* levels for VOC, SO_X and NH_3; however, since we are concurring with the District's NO_X/PM strategy, an analysis of the significant source categories for VOC, SO_X and NH_3 is not necessary and is not addressed further in connection with BACM. *See* discussion in section IV.A. above.

[15] The CRPAQS program as well as the routine PM–10 monitoring network provided the necessary information on contribution levels from PM–10 and NO_X. 2003 PM–10 Plan, Appendix G, page G–6. The Plan also includes dispersion modeling; however, the dispersion modeling is not refined enough to calculate *de minimis* levels for PM–10 and PM–10 precursors.

Act requires reformulated fuel. California's clean diesel program applies to sale of fuel not only to onroad vehicles but also to nonroad vehicles. California has established standards for LPG and other alternative fuels, while EPA does not currently regulate these fuels.

The State has also established programs to reduce in-use emissions from mobile sources. These programs include:

(1) The Carl Moyer Program, providing funding to pay for the incremental costs of cleaner on-road, off-road, marine, locomotive and stationary agricultural pump engines, as well as forklifts, airport ground support equipment, and auxiliary power units (*http://www.arb.ca.gov/msprog/moyer/moyer.htm*); and

(2) The School Bus Idling regulations (*www.arb.ca.gov/regact/sbidling/sbidling.htm*).

These California programs are national models for aggressive and successful efforts to reduce in-use emissions and accelerate turnover to cleaner engines.

We believe that the State's control programs constitute BACM at this time for the mobile source and fuels categories, since the State's measures (supplemented by Federal controls for certain mobile source categories) reflect the most stringent emission control programs currently available, taking into account economic and technological feasibility.

b. *District Sources.* Table 4–8 of the 2003 PM–10 Plan lists the significant source categories that are primarily within the District's regulatory authority. A summary of how BACM has been provided for these categories [16] is provided below.

(1) *Agricultural Irrigation Internal Combustion Engines.* This category is estimated to emit 17.4 tpd NO_X and 1.2 tpd PM–10 in 1999 and is currently uncontrolled. SJVUAPCD Rule 4101 establishes a 20% opacity limit for internal combustion (IC) engines and Rule 4702 establishes NO_X emission limits and other requirements which implement BACM for many IC engines, as discussed below in paragraph IV.D.2.b.iv. (internal combustion engines, stationary), but both of these regulations currently exempt IC engines used in agriculture. Through adoption of the PM–10 Plan Amendments dated December 18, 2003, SJVUAPCD has committed to implement BACM for agricultural IC engines by removing the general agricultural exemptions from Rules 4101 and 4702 and to establish NO_X emission limits in Rule 4702 for diesel IC engines used in agriculture. In a separate action (*see* 68 FR 55917, September 29, 2003, and 69 FR 1271, January 8, 2004), EPA determined that the opacity limits in Rule 4101 are generally sufficient for BACM.

These rules will be revised by 4Q/04 [17] and July 1, 2005, implemented by 3Q/05 and January 1, 2006, and will achieve unspecified PM–10 and 7.5 tons/day NO_X emission reductions respectively. *See* pages 4–22, 4–23 and 4–46 to 4–48.

(2) *Charbroiling.* This category is estimated to emit 1.3 tpd of PM–10 in 1999. SJVUAPCD Rule 4692, *Commercial Charbroiling,* limits emissions of, among other things, particulate matter from chain-driven charbroilers at restaurants and fast food facilities by requiring charbroilers to be operated with a tested or certified catalytic oxidizer control device. On June 3, 2003, EPA published a direct final approval of Rule 4692, locally adopted on March 21, 2002.

In developing Rule 4692, SJVUAPCD used South Coast Air Quality Management District (SCAQMD) Rule 1138, *Control of Emissions from Restaurants,* as guidance. SCAQMD Rule 1138 is considered the most effective district regulatory standard in effect for this source category. The flameless catalytic oxidizer was determined to be the most cost-effective control method for reducing PM–10 emissions from chain-driven charbroilers. SJVUAPCD's staff report supporting adoption of Rule 4692 provides a detailed analysis of the technological and economic feasibility of possible control technologies.

SJVUAPCD estimates that implementation of Rule 4692 will reduce PM–10 emissions by 0.11 ton/day.

(3) *Cotton Gins.* This category is estimated to emit 2.7 tpd of PM–10 in 1999. SJVUAPCD commits to adopt a new rule to require 95% efficient 1D–3D cyclones for high-pressure exhaust units, 90% efficient 2D–2D cyclones for low-pressure exhaust units, and appropriate trash hoppers to minimize fugitive emissions. These limits are considered as BACT when issuing permits for new and modified sources in the SJV.

This rule will be adopted by 4Q/04, implemented by 2005, and will reduce PM–10 emissions by 1.5 tpd. *See* pages 4–22, 4–23, 4–29 and 4–30.

(4) *Internal Combustion Engines, Stationary.* This category is estimated to emit 47 tpd of NO_X in 1999. SJVUAPCD Rule 4701, *Internal Combustion Engines—Phase 1,* and SJVUAPCD Rule 4702, *Internal Combustion Engines—Phase 2,* limit emissions of NO_X and other pollutants from internal combustion (IC) engines rated greater than 50 horsepower. These rules establish different emission limits and compliance schedules depending on engine type, size and location. On February 28, 2002, EPA published a final limited approval and limited disapproval of the version of Rule 4701 locally adopted on December 19, 1996. In this action, EPA noted that Rule 4701 would strengthen the SIP, but also noted several deficiencies in the rule regarding rule applicability and enforceability that prevented EPA from fully approving the rule. *See* 67 FR 9209 (February 28, 2002).

SJVUAPCD amended Rule 4701 and adopted new Rule 4702 on August 21, 2003. Rule 4701 applies to both spark-ignited and compression-ignited (*i.e.,* diesel) IC engines, whereas Rule 4702 applies only to spark-ignited IC engines. Rule 4702 and the amendments to Rule 4701 address the issues identified in EPA's limited disapproval and tighten the NO_X emission limits for spark-ignited IC engines to fulfill Best Available Retrofit Control Technology (BARCT). BARCT is a California requirement that is defined similarly to Federal BACT. The NO_X emission limits for diesel IC engines in Rule 4701 did not need to be tightened since they already reflect BARCT level of control. Both Rules 4701 and 4702 currently exempt IC engines used in agriculture. However, as noted above in paragraph IV.D.2.b.i. (Agricultural irrigation internal combustion engines), SJVUAPCD has committed to remove the general agricultural exemption from Rule 4702 and to amend Rule 4702 to establish BACM-level NO_X emission limits for diesel IC engines used in agriculture.

SJVUAPCD's staff report supporting the 2003 amendments to Rule 4701 and the adoption of Rule 4702 provides a detailed analysis of the inventory of affected engines and the technological and economic feasibility of possible

[16] Pages 4–16 and 8–2 explain that emission estimates from agricultural crop processing losses (3.1 tpd NO_X and 4.4 tpd PM–10) and unspecified agricultural products processing losses (6.2 tpd NO_X) could not be adequately described to allow development of emission controls. This problem occasionally occurs because of the way inventories have been historically generated and is reasonably addressed by SJVUAPCD's efforts to improve the inventory. Page 4–18 reasonably explains that plastic and plastic product manufacturing should now be treated as part of the baseline rather than as a significant source category because of regulations adopted in 2000.

[17] Where commitments are made for a given month, quarter or year, EPA considers the deadline to be the last day of the month, quarter or year.

control technologies. With the exception of agricultural IC engines, Rule 4701 establishes BACM level of control for diesel IC engines, and new Rule 4702 establishes BACM level of control for spark-ignited IC engines. SJVUAPCD estimates 85–96% control for the various requirements, resulting in reduced NO_X emissions of 1.8 tons/day. *See* final draft staff report to SJVUAPCD Rules 4701 and 4702 (August 21, 2003). In a separate action (see 68 FR 55917, September 29, 2003, and 69 FR 1271, January 8, 2004), EPA also determined that the opacity limits in Rule 4101, which also apply to these sources, are generally sufficient for BACM.

In a separate rulemaking, we are proposing approval of Rule 4702.

(5) *Fugitive Dust. (i) Agricultural Conservation Management Practice Program.* The Agricultural Conservation Management Practices (Ag CMP) Program covers the following significant PM–10 source categories: Agricultural unpaved roads, agricultural windblown dust, cattle feedlot dust, harvest operations, livestock wastes, tilling dust, and windblown dust from pasture lands. SJVUAPCD estimates that, without this program, these source categories will emit 144.3 tons per day of PM–10 in 2010. Like other PM–10 nonattainment areas (*e.g.*, Phoenix and Los Angeles), SJVUAPCD has chosen to reduce emissions from agricultural sources with a program that provides more flexibility than a typical command and control regulation.

The Ag CMP Program will require growers to submit CMP plans to SJVUAPCD. The plans will identify the CMPs that the growers are implementing in each of five (three for concentrated animal feeding operations) categories: Unpaved roads, unpaved vehicle/equipment traffic areas, land preparation, harvest, and other (including windblown PM–10 from open areas and agricultural burning). A list of CMPs for these categories is currently being developed, and the CMP plans will include information on the CMPs selected by each grower. The District will ensure that growers comply with the CMP plans and that overall reductions for the Ag CMP Program are met.

Based on the program description and its similarity to programs we have approved elsewhere as BACM, we believe that SJVUAPCD's Ag CMP program will achieve a BACM level of control for these source categories. SJVUAPCD has committed to adopt the Ag CMP Program in April 2004, implement it in July 2004, and reduce PM–10 emissions by 33.8 tons per day in 2010. *See* pages 4–22 to 4–29.

(ii) *Regulation VIII Sources.* SJVUAPCD Regulation VIII addresses fugitive dust emissions from the following significant source categories: agricultural unpaved roads, earthmoving, open areas, and non-agricultural paved and unpaved roads. The eight rules composing Regulation VIII are Rule 8011, General Requirements, Rule 8021, *Construction, Demolition, Excavation, Extraction, and Other Earthmoving*, Rule 8031, *Bulk Materials*, Rule 8041, *Carryout and Trackout*, Rule 8051, *Open Areas*, Rule 8061, *Paved and Unpaved Roads*, Rule 8071, *Unpaved Vehicle/Equipment Traffic Areas*, and Rule 8081, *Agricultural Sources*. The TSD provides more information about these sources and emissions.

The TSD also summarizes the history of EPA rulemaking on Regulation VIII, including previous findings on RACM and BACM. Most recently, we issued a conditional approval of Regulation VIII as fulfilling RACM, and a limited approval/disapproval regarding BACM. *See* 68 FR 8830 (February 26, 2003). As the basis for this limited disapproval, we cited the absence of sufficiently detailed information to evaluate the feasibility and impacts of Regulation VIII at various thresholds and at alternative thresholds.[18]

In the 2003 PM–10 Plan, the District provided a cost-effectiveness analysis to help determine what measures and applicability thresholds in Regulation VIII fulfill BACM.[19] In general, the District adopted all measures projected to cost less than $5,000 per ton PM–10 reduced, and the District performed additional analyses on those measures projected to cost between $5,000 and $500,000 per ton PM–10 reduced. The District also provided a comparison between Regulation VIII and analogous rules that we have recently determined to fulfill BACM in other areas. Based on these analyses, the District committed to change many of the applicability thresholds listed in EPA's 2003 Final Rule.

The Table titled, "Summary of Regulation VIII Measures" summarizes the measures, both adopted and committed, that help fulfill RACM and BACM for fugitive dust source categories covered by Regulation VIII. These are discussed in greater detail in the TSD. We believe these measures and SJVUAPCD's supporting analyses adequately fulfill the condition that was the subject of the conditional approval regarding RACM, and cure the deficiencies that were the subject of the limited disapproval regarding BACM. As a result, final action approving the RACM/BACM demonstration in the 2003 PM–10 Plan would terminate the sanctions and FIP clocks and the disapproval implications associated with our February 26, 2003 action on Regulation VIII.

SUMMARY OF REGULATION VIII MEASURES

Source category	Adopted or committed measure
Paved roads	*Adopted measure* requires paved shoulders on new or modified paved roads that receive 500–3,000 average daily vehicle trips (ADT).
	Committed measure to pave shoulders of 50% highest-ADT urban roads and 25% highest-ADT rural roads, subject to funding availability.
	Committed measure for new street sweepers to be PM–10 efficient, including purchase of at least one efficient sweeper within 3 years.
	Committed measure requires removal of dirt/debris from roadways within 24 hours of identification following a wind/rain event.
	Committed measure requires at least once-per-month sweeping on roads where PM–10 efficient street sweepers are used.
	Committed measure requires trackout control devices on unpaved haul/access roads with ≥ 20 trips per day by 3-axle vehicles.

[18] Technical Support Document for EPA's Notice of Proposed Rulemaking for SJVUAPCD Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071 and 8081, U.S. EPA, March 14, 2002, pg. 9.

[19] Appendix G to the 2003 PM–10 Plan, Exhibit A, "Final BACM Technological and Economic Feasibility Analysis", Sierra Research, March 21, 2003; and Exhibit C, "Supplemental BACM Analysis", San Joaquin Valley Air Pollution Control District, added December 18, 2003.

SUMMARY OF REGULATION VIII MEASURES—Continued

Source category	Adopted or committed measure
	Committed measure requires removal of trackout extending ≥ 50 ft. onto public paved roads within one hour of occurrence, excluding rural area construction sites less than 10 acres in size.
Unpaved roads (public and private, non-agricultural).	*Committed measure* requires all new non-temporary roads in urban areas to be paved. Some county ordinances and commitments prohibit creation of new unpaved roads in rural areas.
	Committed measures require paving of 20% or up to 5 miles of existing urban owned road per city jurisdiction and stabilization of any existing unpaved roads with ≥ 26 annual ADT.
	Committed measure limits vehicle speeds to 25 mph.
Unpaved roads (agricultural)	*Committed measure* requires control of roads on days they receive ≥ 75 vehicle trips and/or ≥ 25 heavy truck trips.
	Committed measure limits speeds on unpaved agricultural roads subject to the Agricultural CMP rule (other options include surface treatment or restricted access).
Unpaved parking/traffic areas public and private, nonagricultural).	*Committed measure* requires stabilization of unpaved parking areas with ≥ 50 annual ADT and/or on days they receive ≥ 25 heavy truck trips.
	Committed measure to revise the existing single-day 75 vehicle trip threshold and replace it with a 150 single-day or 30-day threshold.
Unpaved parking/traffic areas (agricultural)	*Committed measure* requires control of parking/traffic areas with ≥ 50 annual ADT and/or on days they receive ≥ 25 heavy truck trips.
	Committed measure to revise the existing single-day 75 vehicle trip threshold and replace it with a 150 single-day or 30-day threshold.
Construction demolition, industrial (incl. earthmoving, bulk materials handling/storage and windblown sources).	*Committed measure* requires Dust Control Plans for residential projects > 10 acres and commercial projects > 5 acres and District notification of earthmoving projects ≥ 1 acre.
	Adopted measure requires pre-watering sites before earthmoving to meet 20% opacity.
	Adopted measure requires application of water or dust suppressant during earthmoving to meet 20% opacity.
	Adopted measure requires application of water or dust suppressant on unpaved haul/access roads to meet 20% opacity and the conditions of a stablizied surface.
	Committed measure to cease construction activities during wind events. Water trucks must continue operating unless it is unsafe.
	Adopted measure requires application of water or dust suppressant on disturbed inactive surfaces to meet the conditions of a stabilized surface.
Agricultural bulk materials storage piles and trackout.	*Adopted measure* requires application of water or dust suppressant during handling of bulk materials to meet 20% opacity.
	Committed measure to remove existing 100 cubic yard exemption for applying controls during the active handling of bulk material piles.
	Adopted measure requires inactive bulk material piles ≥ 100 cubic yards to be covered or stabilized.
	Committed measure to adopt California Vehicle Code trackout removal requirements.
Vacant disturbed land (non-agricultural)	*Committed measure* to require stabilization of urban vacant lots ≥ 0.5 acres with ≥ 1,000 sq. ft. of disturbed surface. Applicable rural vacant lot size is ≥ 3 acres.
	Adopted measure requires physical barriers or other means to prevent trespass.
	Adopted measure requires watering to meet 20% opacity and surface stabilization following weed abatement on lots ½ acre or larger.

SJVUAPCD commits to adopt revisions to Regulation VIII as summarized in the previous table. These revisions will be adopted in September 2004, implemented in September 2004, and will reduce PM–10 emissions from 2010 baseline estimates as shown in the following table. *See* pages 4–22, 4–23 and 4–31 to 4–38.

ESTIMATED PM–10 EMISSION REDUCTIONS FROM REGULATION VIII

Rule	2010 Emissions (tpd)	2010 Emission reductions (tpd)	% Reduction
8021	30.5	6.1	20.0
8031	0.2	0.0	0.3
8051	3.0	0.5	16.7
8061	85.3	10.4	12.2
8071	1.0	0.3	30.0
8081	16.9	1.5	8.9
Total	136.9	18.8	13.7

(6) *Glass Manufacturing.* This category is estimated to emit 12.3 tpd of NO_X in 1999. SJVUAPCD Rule 4354, *Glass Melting Furnaces,* limits emissions of NO_X and other pollutants from glass melting furnaces in the San

Joaquin Valley. On September 1, 2000 (65 FR 53181), EPA finalized a limited approval and limited disapproval of the version of Rule 4354 locally adopted on April 16, 1998. In that action, EPA noted that the rule as a whole strengthens the SIP, but identified several deficiencies regarding monitoring and compliance requirements.

SJVUAPCD amended Rule 4354 on February 21, 2002. In addition to addressing the issues identified in EPA's limited disapproval, this amendment changed the definition of "major NO_X source" from 50 to 25 tons or more per year of NO_X, to reflect the San Joaquin Valley's reclassification from serious to severe ozone nonattainment status. EPA fully approved this Rule on December 6, 2002 (65 FR 72573).

SJVUAPCD's staff report supporting the 2002 amendments provides a rule consistency analysis that compares the elements of Rule 4354 with the corresponding elements of other District rules, Federal regulations and guidelines that apply to the same type of equipment or source category. The staff report for the April 16, 1998, version of the rule described the rule as implementing BARCT.

The NO_X emission limits in Rule 4354 for container glass furnaces are consistent with limits imposed in SCAQMD and the Bay Area Air Quality Management District. The SJVUAPCD conducted cost effectiveness and socioeconomic analyses for the emission limits in Rule 4354, and the results of these analyses are contained in the staff report for the April 16, 1998, version of the rule. *See* final draft staff reports for amendments to SJVUAPCD Rule 4354 (April 16, 1998 and February 22, 2002).

(7) *Manufacturing and Industrial Fuel Combustion.* This category is estimated to emit 24.3 tpd of NO_X in 1999. SJVUAPCD commits to adopt new rules that would establish NO_X emission standards for dryers based on PUC-quality natural gas, low excess air, low-NO_X burners and flue gas recirculation; require low excess air, low-NO_X burners and flue gas recirculation for small boilers, steam generators and process heaters; and require BACM-level prohibitions for industrial, commercial and institutional water heaters.

These rules will be adopted by 2Q/04, 4Q/04 and 4Q/04; implemented by 2006, 2006 and 2004; and will reduce emissions by 1.0, 1.0 and 0.2 tpd of NO_X respectively, although not all these reductions fall within this source category. *See* pages 4–22, 4–23, 4–30, 4–31 and 4–42 to 4–44.

(8) *Natural Gas Boilers.* This category is estimated to emit 3.7 tpd NO_X in 1999. SJVUAPCD Rule 4351, *Boilers, Steam Generators, and Process Heaters—Phase 1*, Rule 4305, *Boilers, Steam Generators, and Process Heaters—Phase 2*, and Rule 4306, *Boilers, Steam Generators, and Process Heaters—Phase 3*, limit emissions of NO_X and other pollutants from gaseous fuel or liquid fuel fired boilers, steam generators, and process heaters with a total rated heat input greater than 5 million Btu per hour. These rules establish different emission limits and compliance schedules depending on unit type, fuel and size. On February 28, 2002, EPA published a final limited approval and limited disapproval of Rule 4305, locally adopted on December 19, 1996, and Rule 4351, locally adopted on October 19, 1995. In this action, EPA noted that the general requirements of these rules would strengthen the SIP, but identified several deficiencies regarding rule applicability and enforceability that prevented EPA from fully approving the rule. *See* 67 FR 9209 (February 28, 2002).

SJVUAPCD amended Rules 4351 and 4305 on August 21, 2003, and adopted Rule 4306 on September 18, 2003. The District took these actions partly to address the issues identified in EPA's limited disapproval but also to establish BACM level of control for this source category.

SJVUAPCD's staff report supporting the 2003 amendments for Rule 4305 and 4351, and the adoption of Rule 4306, provides a detailed analysis of the technological and economic feasibility of possible control technologies. This includes socioeconomic and cost effectiveness analyses of combustion modification and exhaust gas treatment. The analysis also includes comparison to analogous requirements in other nonattainment areas. While Rules 4305 and 4351 remain enforceable, they will become obsolete as the more stringent limits of Rule 4306 become effective. These limits are generally at least as stringent as State BARCT. SJVUAPCD estimates that Rule 4306 will reduce NO_X emissions by about 7.7 tons/day in 2005. *See* final draft staff report to SJVUAPCD Rules 4305, 4351 and 4306 (September 18, 2003). In a separate rulemaking, we are proposing approval of these rules.

(9) *Natural Gas Fired Oilfield Steam Generators.* This category is estimated to emit 6.4 tpd of NO_X and 1.4 tpd of PM–10 in 1999. The discussion above of NO_X controls for natural gas boilers in Rule 4306 applies to natural gas fired oilfield steam generators as well. Page 4–18 states that a BACT investigation revealed that there are no available controls for PM–10.

(10) *Oil Drilling and Workover.* This category is estimated to emit 10.8 tpd of NO_X in 1999. The PM–10 plan (pages 4–18, G–133 and G–134) explains that SJVUAPCD Rule 2280 and CARB's portable equipment registration program (PERC, *see* 13 California Code of Regulations 2450–2466) provide BACM for this category. These rules establish numerous operational requirements and emission limitations for applicable engines. Sources may choose to register engines, including those used for oil drilling and workover, under either PERC or SJVUAPCD's analogous Rule 2280 program. Most sources register under PERC because it is less expensive and allows use of portable engines throughout the state. To register under PERC, engines manufactured after January 1, 1996, must meet the most stringent emission standard (see 13 CCR 2456(e)(b)), which is effectively California's Off-Road Compression Ignition Engine Standards referenced in section IV.D.2.a.(6).

(11) *Open Burning.* This category is estimated to emit 4.6 tpd of NO_X and 11.3 tpd of PM–10 in 1999. EPA has separately determined that SJVUAPCD Rule 4103 implements BACM for open burning. *See* 67 FR 8894 (Feb. 27, 2002).

(12) Prescribed Burning. This category is estimated to emit 16.5 tpd of NO_X and 28.9 tpd of PM–10 in 1999. EPA has separately determined that SJVUAPCD Rule 4106 implements BACM for prescribed burning. *See* 67 FR 8894, (Feb. 27, 2002).

(13) Residential Space Heating. This category is estimated to emit 2.7 tpd of NO_X in 1999. SJVUAPCD commits to adopt a new rule requiring that newly installed residential furnaces emit no more than 40 nanograms NO_X per joule of heat output. This standard is equivalent to controls adopted in the South Coast, Bay Area and other parts of California, and is believed to be the most stringent in effect in the country.

This rule will be adopted by 3Q/04, implemented fully by 2020, and will reduce NO_X emissions by 0.01 tons/day. *See* pages 4–22, 4–23, 4–45 and 4–46.

(14) Residential Water Heaters. This category is estimated to emit 1.6 tpd of NO_X in 1999. SJVUAPCD Rule 4902, *Residential Water Heaters*, limits NO_X emissions from residential gas-fired water heaters in the San Joaquin Valley. This rule establishes a maximum NO_X emission limit for newly manufactured water heaters with a rated heat input less than or equal to 75,000 Btu/hr. Rule 4902 was originally adopted by the SJVUAPCD on June 17, 1993, and

submitted to EPA on November 4, 2003, as a revision to the SIP. EPA is publishing a separate direct final approval of this submittal.

SJVUAPCD estimates that the 40 nanograms per joule of heat output limit in Rule 4902 will reduce NO_X emissions by 2.24 tons per day by 2003.

The requirements in Rule 4902 are among the most stringent in the country and the NO_X emission limit is equivalent to limits in effect elsewhere in California (*e.g.,* Sacramento, Santa Barbara and Ventura). *See* staff report to SJVUAPCD Rule 4902 (May 25, 1993).

(15) Residential Wood Combustion. This category is estimated to emit 11.3 tpd of PM–10 in 1999. EPA has separately determined that SJVUAPCD Rule 4901 implements BACM for residential wood combustion. *See* 68 FR 56181(Sept. 9, 2003).

(16) Service and Commercial—Other Fuel Combustion. This category is estimated to emit 25.7 tpd of NO_X and 1.0 tpd of PM–10 in 1999. SJVUAPCD has committed to adopt new rules that would establish NO_X emission standards for dryers based on PUC-quality natural gas, low excess air, low-NO_X burners and flue gas recirculation; require low excess air, low-NO_X burners and flue gas recirculation for small boilers, steam generators and process heaters; and require BACM-level prohibitions for industrial, commercial and institutional water heaters.

These rules will be adopted by 2Q/04, 4Q/04 and 4Q/04; implemented by 2006, 2006 and 2004; and will reduce emissions by 1.0, 1.0 and 0.2 tpd of NO_X respectively, although not all these reductions fall within this source category. *See* pages 4–22, 4–23, 4–30, 4–31 and 4–42 to 4–44.

(17) Solid-Fuel Boiler, Steam Generators and Process Heaters. This category is estimated to emit 3.5 tpd of NO_X in 1999. SJVUAPCD Rule 4352, *Solid Fuel Fired Boilers, Steam Generators, and Process Heaters,* limits emissions of NO_X and other pollutants from boilers and similar units burning coal, biomass and other solid fuels in the San Joaquin Valley. On February 11, 1999 (64 FR 6803), EPA published a direct final approval of the version of Rule 4352 locally adopted on October 19, 1995. In this action, EPA noted that the emission limits in Rule 4352 (*e.g.,* 0.20 lb/MMBtu of heat input for coal) generally fulfilled RACT requirements.

Appendix G, Exhibit D, of the PM–10 Plan provides an analysis of the 15 units subject to Rule 4352. This analysis compares the emission limits in District permits with analogous limits provided in EPA's RACT/BACT/LAER clearinghouse. The analysis shows that each District permit is more stringent than the average limit found in the clearinghouse for similar sources (*e.g.,* large coal units, medium biomass units).

Because cost, feasibility and effectiveness of control vary widely in this source category depending on fuel, size and design of each unit, a BACM demonstration for the category is necessarily complex. The methodology provided by SJVUAPCD is conservative in that the RACT/BACT/LAER clearinghouse describes controls for new sources, which are generally more stringent than those required as BACM for existing sources. However, some of the clearinghouse requirements may be dated and BACM is generally implemented by rule rather than permit. Given the relatively small size of this source category and the complexity of the analysis, we believe SJVUAPCD has made reasonable assumptions on balance.

(18) Stationary Gas Turbines. This category is estimated to emit 10.2 tpd of NO_X in 1999. SJVUAPCD Rule 4703 limits emissions of NO_X and other pollutants from stationary gas turbine systems with ratings equal to or greater than 0.3 megawatt (MW) and/or maximum heat input ratings of more than 3 million Btu per hour. This rule that establishes different emission limits and compliance schedules depending on turbine size, fuel and design. On February 28, 2002, EPA published a final limited approval and limited disapproval of the version of Rule 4703 locally adopted on October 16, 1997. In this action, EPA noted that the emission limits in Rule 4703 (*e.g.,* 9–42 ppmv NO_X, depending on size, for natural gas fired units) generally established RACT-level of control for this source category, but EPA noted several other deficiencies in the rule, however, regarding rule applicability and enforceability that prevented EPA from fully approving the rule. *See* 67 FR 9209.

SJVUAPCD amended Rule 4703 on April 25, 2002. In addition to addressing the issues identified in EPA's limited disapproval, this amendment significantly tightened the emission limits (*e.g.,* 3–35 ppmv NO_X, depending on size, for all but one natural gas fired design). SJVUAPCD tightened the emission limits partly to fulfill State BARCT.

SJVUAPCD's staff report supporting the 2002 amendments provides a detailed analysis of the inventory of affected turbines and the technological and economic feasibility of possible control technologies. SJVUAPCD's 2002 amendments to Rule 4703 establish BACM level of control for this source category. SJVUAPCD estimates that the 2002 amendments will reduce NO_X emissions by about 5.4 tons/day in 2010. *See* final staff report to SJVUAPCD Rule 4703 (April 25, 2002). In a separate rulemaking, we are proposing action on this rule.

E. VOC and SO_X Sources

SJVUAPCD committed to adopt new or revised rules to reduce VOC and SO_X emissions. A BACM demonstration is not needed for these emissions because, given the NO_X/PM strategy, they are not considered to be necessary at this time. After the CRPAQS results are available and as part of the mid-course review for the 2003 PM–10 Plan, the District will reexamine whether VOC and SO_X reductions are necessary. We are, however, proposing to approve the commitments for VOC and SO_X requirements under CAA sections 301(a) and 110(k)(3) as strengthening the SIP.

1. Oil and Gas Fugitives From Crude Oil and Gas Production and Natural Gas Processing Facilities

This category is estimated to emit 10.6 tpd of VOC in 2005. SJVUAPCD commits to adopt Rule 4403 to reduce fugitive emissions from flanges, valves, fittings, and other components. Possible controls include lowering the gaseous leak threshold, eliminating exemptions, increasing inspection frequency, shortening the repair period and replacing frequently leaking components with BACT. This rule revision will be adopted in 1Q/04, implemented in 1Q/05 and will reduce VOC emissions by 4.8 tpd. *See* page 4–10.

2. Oil and Gas Fugitives From Petroleum Refineries and Chemical Plants

This category is estimated to emit 0.5 tpd of VOC in 2005. SJVUAPCD commits to adopt Rule 4455 to reduce fugitive emissions from flanges, valves, and other components. Possible controls include lowering the gaseous leak threshold, increasing inspection frequency, shortening the repair period and replacing frequently leaking components with BACT. This rule revision will be adopted in 1Q/04, implemented in 1Q/05 and will reduce VOC emissions by 0.2 tpd. *See* pages 4–10 and 4–11.

3. Can and Coil Coatings

This category is estimated to emit 4.6 tpd of VOC in 2005. SJVUAPCD commits to revise Rule 4604 to lower VOC content limits consistent with the State's RACT/BARCT determination. This rule revision will be adopted in 1Q/04, implemented in 4Q/04 and will

reduce VOC emissions by 0.3 tpd. *See* page 4–11.

4. Agricultural Conservation Management Practice Program

The commitment for this category, summarized above, is also projected to achieve unspecified VOC emission reductions.

5. Dryers

The commitment for this category, summarized above in sections IV.D.2.b.7. (manufacturing and industrial fuel combustion) and IV.D.2.b.16. (service and commercial-other fuel combustion), is also projected to reduce SO_X emissions by 1.1 tpd.

6. Gas-Fired Oilfield Steam Generators

The sources subject to this commitment are estimated to emit 8.5 tpd of SO_X in 2006. SJVUAPCD commits to revise Rule 4406 to require fuel conditioning and/or caustic scrubbing of the exhaust gas. This rule revision will be adopted in 4Q/04, implemented in 2006, and will reduce SO_X emissions by 5.0 tpd. *See* pages 4–22, 4–23, 4–39 and 4–40.

7. Glass Manufacturing

Rule 4354 also establishes NO_X limits as described in section IV.D.2.b.6., Glass Manufacturing. This category is estimated to emit 4.2 tpd of SO_X in 2006. SJVUAPCD commits to revise Rule 4354 to establish SO_X emission limits designed to require low-sulfur fuel or caustic scrubbing of the exhaust gas. This rule revision will be adopted in 2Q/05, implemented in 2006, and will reduce SO_X emissions by 1.1 tpd. *See* pages 4–22, 4–23 and 4–39.

8. Small Boilers, Steam Generators and Process Heaters

The commitment for this category, described above in paragraphs IV.D.2.b.vii (manufacturing and industrial fuel combustion) and IV.D.2.b.xv (service and commercial-other fuel combustion), is also projected to reduce SO_X emissions by 0.1 tpd.

9. Steam-Enhanced Crude Oil Production Well Vents

Sources subject to this commitment are estimated to emit 14.7 tpd of VOC in 2006. SJVUAPCD commits to revise Rule 4401 to lower exemption thresholds. This rule will be revised in 1Q/05, implemented in 2006, and will reduce VOC emissions by 1.5 tpd. *See* pages 4–22, 4–23 and 4–45.

10. Wineries

Sources subject to this commitment are estimated to emit 7.9 tpd of VOC in 2007. SJVUAPCD commits to adopt a new rule to establish controls for wineries using tanks with vapor collection/control, carbon adsorption, water scrubbers, catalytic incineration, condensation, and/or additional temperature controls. This rule will be adopted in 4Q/04, implemented in 2007, and will reduce VOC emissions by 2.5 tpd. *See* pages 4–22, 4–23, 4–44 and 4–45.

F. Attainment Demonstration

For serious PM–10 nonattainment areas, CAA section 189(b)(1)(A) requires an attainment demonstration showing attainment by the applicable attainment date using appropriate air quality modeling. As explained in section III.F. above, for serious PM–10 areas that have failed to attain by the applicable attainment date (such as the SJV), the CAA requires plan revisions which provide for, among other things, attainment of the PM–10 standards as expeditiously as practicable. CAA section 189(d). Because the SJV missed the 2001 attainment date otherwise applicable, we believe that the attainment date is governed by other provisions of the CAA. The attainment deadline applicable to the plan revision is therefore as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice (67 FR 48039, published July 23, 2002). EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." CAA section 179(d)(3).

The 2003 PM–10 Plan demonstrates attainment of the PM–10 standards by 2010 based on the NO_X/PM strategy (see section IV.A. above). To provide for expeditious attainment, the Plan relies on fully adopted regulations and enforceable commitments to adopt new, identified measures that will constitute BACM (section IV.D.2. above).

In addition, the 2003 PM–10 Plan's attainment demonstration relies on emission reductions from an enforceable commitment by the SJVUAPCD to adopt and implement a new Indirect Source Mitigation Program achieving 4.1 tons/day of NO_X and 6.2 tons/day of PM–10 and an enforceable commitment by the State achieving 10 tons/day of NO_X and 0.5 tons/day of PM–10 in 2010. Finally, the Plan includes an enforceable commitment to submit a SIP revision in March 2006 (mid-course review or MCR) which will include the results of the CRPAQS. These commitments are discussed further below.

1. Modeling Used for the Attainment Demonstration

EPA's modeling guidance (PM–10 SIP Development Guideline (PMSDG), EPA–450/2–86–001, June 1987) presents three options for estimating air quality impacts of emissions of PM–10 using dispersion and receptor models: [20] (1) Use of receptor and dispersion models in combination (preferred); (2) use of dispersion model alone; and (3) use of two receptor models, with a control stratagem developed using a proportional model. The third approach is only encouraged if no applicable dispersion model is available, which is the case for the SJV.[21] Therefore, EPA based its evaluation of the attainment demonstration on the District's use of two receptor models, with a control stratagem developed using a proportional model.

The recommended approach for PM–10 source apportionment is the use of at least two receptor methods: Chemical Mass Balance (CMB) and a corroborating method.[22] If CMB is used for source apportionment, it is required that at least one other modeling approach be used as a corroborating analysis. The corroborating analysis may be factor analysis, microscopy, automated scanning electron microscopy, microinventory, trajectory analysis, or other corroborating approach.[23] In the PMSDG, the terms "model" and "method" are used interchangeably, even though analysis methods such as

[20] PMSDG, 4.1 Introduction.

[21] The Guideline on Air Quality Models (GAQM), 40 CFR part 51, Appendix W, has a detailed discussion of modeling requirements for particulate matter and states that "[n]o model recommended for general use at this time accounts for secondary particulate formation or other transformations in a manner suitable for SIP control strategy demonstrations." (40 CFR Part 51, Appendix W, 7.2.2.c.) Primary particulates cannot be modeled independently through dispersion modeling. Thus, although the 2003 PM–10 Plan includes dispersion modeling (Appendix M, UAM Documentation for NO_X and NH_3), we are not relying on it for our proposed approval of the Plan's attainment demonstration. For more information, *see* the TSD for this rulemaking.

Given that the guidance documents for PM–10 do not indicate how to model secondary pollutant formation, EPA must evaluate submitted PM–10 SIPs on a case-by-case basis, depending on the air quality facts of each area. EPA has evaluated the attainment demonstration in the 2003 PM–10 Plan based on the Agency's PM–10 guidance documents, PMSDG and GAQM. EPA is currently developing guidance for demonstrating attainment of the PM–2.5 standard, 40 CFR 50.7, that may ultimately provide more specificity regarding the models to be used for secondary particulates.

[22] PMSDG, Table 4–2 Recommended Approaches for PM10 Source Apportionment.

[23] PMSDG, 4.4 Receptor Models for Estimation PM10 Concentrations.

scanning electron or optical microscopy are methods, not models.[24]

In the 2003 PM–10 Plan, receptor modeling is used to identify the source contributions for each of the measured ambient concentrations above the PM–10 standards (*i.e.*, days exceeding the PM–10 standards). The corroborating analysis for the Plan includes the use of correlation coefficients, episode day and time serious analyses, and wind trajectory analyses. The proportional modeling is used to identify the relationship between source categories and PM–10 concentrations for specific days and the effect of emission reductions from the proposed control strategy on PM–10 concentrations. *See* TSD for more details.

The results of the proportional modeling for the 24-hour standard and annual standard are presented in the tables below, which show the current and future design concentrations for each site which exceeds the standards.

SIMULATED FUTURE YEAR 24-HOUR PM–10 VALUES

Site name	Design value	2010 without additional reductions	2010 with additional reductions
Bakersfield—California Ave	190	186	137
Bakersfield—Golden # 2	205	203	151
Clovis	155	145	120
Corcoran, Patterson Ave	174	185	143
	174	197	138
Fresno—Drummond	186	181	140
Fresno—First St	193	182	144
Hanford, Irwin St	185	189	143
Modesto, 14th Street	158	144	121
Oildale, 3311 Manor St	158	151	120
Turlock, 900 Minaret Street	157	162	116

SIMULATED FUTURE YEAR ANNUAL PM–10 VALUES

Site name	Design value	2010 without additional reductions	2010 with additional reductions
Bakersfield—Golden # 2	57	58	49
Fresno—Drummond	50	50	45
Hanford—Irwin St	53	52	47
Visalia—Church St	54	52	46

Using the District's analysis, attainment is demonstrated for both the 24-hour and annual PM–10 standards. *See* 2003 PM–10 Plan, p. 6–8 to 6–9. Each site is projected to have design concentrations at or below the PM–10 standards in 2010. We believe that the attainment demonstration approach in the 2003 PM–10 Plan satisfies EPA's requirements for demonstrating attainment of the 24-hour and annual PM–10 standards.

2. Attainment Date

The SJV is one of only eight PM–10 nonattainment areas in the country. For urban areas nationwide, the SJV has the third highest average annual mean PM–10 concentration (ranking only behind Phoenix, Arizona and the greater Los Angeles area.) The PM–10 concentrations recorded over the last few years at the Corcoran and Bakersfield monitoring sites have been significantly above the Federal standard. The PM–10 problem in the SJV is complex, caused by both direct PM–10 and reactive precursors, and compounded by the topographical and meteorological conditions for the area. 2003 PM–10 Plan, Chapter 2.

As discussed in section IV.A. above, the District's strategy for attaining the PM–10 standard relies on reductions of PM–10 and NO_X. The SJV needs significant reductions in PM–10 and NO_X to demonstrate attainment. Further reduction of these pollutants is challenging, since the State and local air pollution regulations already in place include most of the readily available PM–10 and NO_X control measures. Moreover, attainment in the San Joaquin Valley must also mitigate the emissions increases associated with the projected increases in population and activity levels for this high-growth area.

As discussed in section IV.D. above, we believe that the combination of previously adopted measures and commitments for specific future controls in the Plan represent BACM for this area. The Plan also includes two measures, the Indirect Source Mitigation Program and the State mobile source measure commitment (discussed in section IV.F.3. below.) which we believe go beyond the BACM requirement. We believe that the District's implementation schedule for all measures needed for attainment is expeditious. The direct PM–10 reductions are achieved primarily from Regulation VIII fugitive dust, the Ag CMP Program and residential wood combustion requirements. These types of dust and smoke controls present special implementation challenges (*e.g.*, the large number of individuals subject to regulation and the difficulty of applying conventional technological control solutions). Because of the importance of these relatively difficult to control source categories in the San Joaquin emissions inventory and the need to conduct significant public outreach if applicable control approaches are to be effective, EPA agrees with the District and State that the Plan reflects expeditious implementation of the programs during the 2003–2010 time frame. EPA also agrees that the implementation schedule for enhanced stationary source controls is expeditious, taking into account the

[24] PMSDG, p. 4–11.

time necessary for purchase and installation of the required control technologies. Finally, we believe that it is not feasible at this time to accelerate the emission reduction schedule for the State and Federal mobile source requirements which set aggressive compliance dates for new emission standards and which must rely on fleet turnover over the years to deliver the ultimate emission reductions. *See* 2003 PM–10 Plan, p. ES–19. The District's control strategies are discussed in greater detail in Chapter 4 of the 2003 PM–10 Plan, in section IV.D.2. above and in section IV.F.3. below.

Therefore, EPA believes that the District and State are implementing these rules and programs as expeditiously as practicable and that it is not feasible to have faster implementation dates nor are there any additional feasible measures which can be implemented. We anticipate that the District will reevaluate this conclusion after completion of the CRPAQS and mid-course review, discussed below.

Based on the above evaluation, as provided for in CAA section 179(d)(3), EPA is proposing to find that the attainment date of 2010 for the SJV is as expeditious as practicable due to the severity of nonattainment and availability and feasibility of pollution control measures. EPA expects, however, that the State and District will continue to investigate opportunities to accelerate progress as new control opportunities arise, and that the agencies will promptly adopt and expeditiously implement any new measures found to be feasible in the future.

3. Enforceable Commitments for Future Control Measures.

In addition to adopted regulations and enforceable commitments for new, identified BACM for PM–10 and NO_X sources discussed in section IV.D.2.b. above,[25] the 2003 PM–10 Plan's attainment demonstration relies on reductions from the District's commitment for an Indirect Source Mitigation Program and the State's commitment for a additional NO_X and PM–10 reductions from mobile sources.

a. *Indirect Source Mitigation Program.* The 2003 PM–10 Plan contains an enforceable commitment by SJVUAPCD to adopt and implement a new Indirect Source Mitigation Fee rule to require new development projects to mitigate emissions onsite or contribute to a mitigation fund used for offsite emission reductions. This rule will be adopted in 2004, implemented in 2005, and will be designed to reduce PM–10 emissions from 2010 baseline estimates as shown in the following table:

ESTIMATED PM–10 EMISSION REDUCTIONS FROM INDIRECT SOURCE MITIGATION PROGRAM

Category	2010 Emissions (tpd)	2010 Emission reductions (tpd)	% Reduction
Paved Road Dust	43.3	4.2	9.7
Unpaved Road Dust	6.6	1.2	18.2
Windblown Dust	3.1	0.6	19.4
Unpaved Traffic Areas	1.0	0.2	20.0
Total	54.0	6.2	11.5

This rule will also be designed to reduce 4.1 tpd of NO_X. *See* pages 4–22, 4–23 and 4–40 to 4–42. EPA is proposing to approve this commitment.

b. *Commitment to Achieve Additional* PM–10 and NO_X Reductions in 2010. The 2003 PM–10 Plan also contains an enforceable commitment by the State to adopt mobile source measures between 2002 and 2008 that will achieve an additional 10 tons/day of NO_X and 0.5 tons/day of PM–10 by 2010. Measures being considered to achieve these reductions are listed in the Plan. *See* 2003 PM–10 Plan, pages 4–49 to 4–50. These measures are necessary for the attainment demonstration. While the State has provided estimates of potential reductions from each of the measures listed in the 2003 PM–10 Plan, the State has committed to achieve the overall emission reductions. 2003 PM–10 Plan, page 4–49 to 4–50, Table 4–14. We are proposing, therefore, to approve and make federally enforceable the State's commitment to adopt and implement measures sufficient to achieve 10 tpd of NO_X and 0.5 tpd of PM–10 in 2010. We will review the State's projected reductions from individual measures when they are fully adopted by the State and will track progress to ensure that the State is on a path to deliver the needed reductions.

c. *Summary of Commitments to Adopt and Implement Control Measures in the 2003 PM–10 Plan.* The PM–10 and NO_X commitments, including the adoption and implementation dates,[26] [27] and annual and seasonal emissions reductions, relied upon by the attainment demonstration in the Plan are summarized in the two tables below (*See* section IV.D.2.b above and 2003 PM–10 Plan, pages 4–16 to 4–19, 4–23, 4–52 and 4–53).

[25] The 2003 PM–10 Plan includes commitments for VOC and SO_X sources; however, since we are concurring with the District's NO_X/PM strategy, these commitments are not necessary for attainment. We are, however, approving these commitments under CAA sections 301(a) and 110(k)(3) as strengthening the SIP. The VOC and SO_X commitments are summarized in section IV.E. above.

[26] *See* footnote 17.

[27] In addition, the District and State have committed to submit rules and other measures to EPA in a timely manner. The SJVUAPCD Governing Board, Resolution No. 03–06–07, #10, June 19, 2003 commits to "* * * submit * * * rules and measures to the California Air Resources Board within one month of adoption for transmittal to EPA as a revision to the State Implementation Plan." The State's submittal letter for the 2003 PM–10 Plan (August 19, 2003 letter from Catherine Witherspoon to Mr. Wayne Nastri) states that "[t]o ensure steady progress on SIP implementation, [the State] will * * * work closely with the U.S. EPA and District staff to ensure timely rule submittal." CARB has entered into a protocol with the California Air Pollution Control Officers Association (CAPCOA) providing that CARB will complete its final review of rules within 60 days and will submit approvable rules as a SIP revision as part of quarterly submittals, or, in cases where there is an EPA deadline, as soon as possible. (Revisions to CAPCOA–ARB Protocol, Section III, adopted November 7, 1986, *http://www.arb.ca.gov/drdb/protocol.pdf*). In compliance with these provisions, approvable rules are submitted as SIP revisions to EPA within 6 months from air district adoption and submittal. Therefore, EPA is interpreting the statement in the State's submittal commitment as a State commitment to submit SIP revisions from the SJVUAPCD to EPA within 6 months of the District's submission of those revisions to CARB.

ENFORCEABLE COMMITMENTS FOR PM–10 CONTROL MEASURES

Source category	Adoption date	Implementation date	2010 reductions (annual) (tpd)	2010 reductions (seasonal) (tpd)
Agricultural Internal Combustion Engines.	4Q/04 and 7/1/05	3Q/05 and 1/1/06	n/a	n/a
Cotton Gins	4Q/04	2005	1.7	2.5
Ag CMP Program	April 2004	July 2004	33.8	26.7
Fugitive PM–10, Regulation VIII Sources.	September 2004	September 2004	18.8	17.9
Indirect Source Mitigation Program	2004	2005	6.2	5.7
State Mobile Sources	2002–2008	2002–2008	0.5	0.5

ENFORCEABLE COMMITMENTS FOR NO_X CONTROL MEASURES

Source category	Adoption date	Implementation date	2010 reductions (annual) (tpd)	2010 reductions (seasonal) (tpd)
Agricultural Internal Combustion Engines.	4Q/04 and 7/1/05	3Q/05 and 1/1/06	<9.3	<9.3
Indirect Source Mitigation Program	2004	2005	4.1	3.1
Manufacturing and Industrial Fuel Combustion (dryers, small boilers and water heaters).	2Q/04, 4Q/04 and 4Q/04	2006, 2006 and 2004	2.6	3.1
Residential Space Heating	3Q/04	2020	0	0
Service and Commercial-Other Fuel Combustion (dryers, small boilers and water heaters).	2Q/04, 4Q/04 and 4Q/04	2006, 2006 and 2004	[1]	[1]
State Mobile Sources	2002–2008	2002–2008	10	10

[1] *See* Manufacturing and Industrial Fuel Combustion above.

d. Approvability of Enforceable Commitments. EPA believes, consistent with past practice, that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[28] [29] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (a) Whether the commitment addresses a limited portion of the statutorily-required program; (b) whether the state is capable of fulfilling its commitment; and (c) whether the commitment is for a reasonable and appropriate period of time.[30]

As an initial matter, EPA believes that circumstances in the SJV warrant the consideration of enforceable commitments. The great bulk of emission reductions needed for attainment comes from regulations already fully adopted by the District, the State, or the Federal government. These previously adopted measures include CARB regulations governing area and mobile sources, SJV regulations governing stationary sources, and Federal regulations such as standards that apply to diesel engines and locomotives.

Moreover, EPA believes that the SJV rulemaking schedule is proceeding as expeditiously as practicable and that it was not possible for the District and State to complete the rule development and adoption processes prior to plan submittal for the new, identified NO_X and PM–10 control measures to which the plan commits and therefore consideration of enforceable commitments is warranted. First, because the vast majority of NO_X sources are already subject to stringent, adopted rules, it is increasingly difficult to develop regulations for the remaining universe of uncontrolled sources. Also, the District is continuing its efforts to control direct PM–10 sources which have been historically difficult to control due to the fact that a large fraction of the sources are area-wide sources whose emissions are directly related to growth in population and vehicle miles traveled (2003 PM–10 Plan, pages 4–8 to 4–9). In addition, a

[28] Commitments approved by EPA under section 110(k)(3) of the CAA are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments: *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp. 1285 (D.N.J. 1987), *aff'd*, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in par*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under CAA Section 179(a), which starts an 18-month period for the State to correct the nonimplementation before mandatory sanctions are imposed.

[29] CAA section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act." Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any "means or techniques" that EPA determines are "necessary or appropriate" to meet CAA requirements, such that the area will attain as expeditiously as practicable but no later than the designated date. Furthermore, the express allowance for "schedules and timetables" demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

[30] The U.S. Court of Appeals for the Fifth Circuit recently upheld EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) (see previous footnote) and the Agency's use and application of the three factor test in approving enforceable commitments in the Houston-Galveston ozone SIP. *BCCA Appeal Group et al.* v. *U.S.E.P.A. et al.*, 2003 U.S. App. LEXIS 21975 (5th Cir. 2003).

significant portion of the necessary PM–10 reductions are from agricultural fugitive dust sources, a previously unregulated source in the SJV. Since agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability and relation to urban centers, each PM–10 agricultural strategy is uniquely based on local circumstances. Unlike many stationary sources, which can have many common design features, whether located in California or Minnesota, agricultural sources and activities vary greatly throughout the country. Finally, since the State sources are already covered by BACM (see IV.D.2.a. above), any additional controls from the State source categories would be beyond BACM and difficult to achieve.

EPA has also determined that the submission of enforceable commitments for the adoption of identified control measures necessary to achieve attainment by 2010 will not interfere with the SJV's ability to make reasonable progress toward attainment of the standard. The majority of the enforceable commitments have adoption and implementation dates by 2006 with incremental reductions from the implementation dates until 2010 (see 2003 PM–10 Plan, page 4–52, 4–53).

As discussed above, after concluding that the circumstances warrant consideration of an enforceable commitment, EPA considers three factors in determining whether to approve the submitted commitments. These factors are satisfactorily addressed with respect to the District's and the State's commitments.

(1) The Commitments Address a Limited Portion of the 2003 PM–10 Plan. The 2003 PM–10 Plan provides annual average and winter seasonal inventories for NO_X and PM–10. *See* 2003 PM–10 Plan, pages 3–35 to 3–37, 3–40 to 3–42 and Appendix D. The annual average inventories (annual inventory) are representative of the annual PM–10 standard and the winter seasonal inventories (seasonal inventory) are representative of the 24-hour PM–10 standard.

As mentioned above, for NO_X, there is a steady decline in emissions in both the annual and seasonal inventories from 1999 through 2010 (*See* 2003 PM–10 Plan, page 3–37).

SUMMARY OF 2003 PM–10 PLAN'S NO_X EMISSIONS INVENTORIES

[Tons per day]

	1999	2002	2005	2008	2010
Annual inventory	565.2	519.8	478.8	430.3	401.6
Seasonal inventory	571.7	525.8	484.1	435.7	406.3

This steady decline in emissions is attributable to reductions in the State's mobile source programs (see section IV.D.2.a.) and from previously adopted stationary and area source rules.[31] 2003 PM–10 Plan, pages 3–9 and 3–12.[32] In order to attain, the 2010 NO_X inventories, must be reduced by 45.3 tpd for the annual average inventory and 44.9 tpd for the winter seasonal inventory. *See* 2003 PM–10 Plan, page 4–53.

The 2003 PM–10 Plan will achieve these emissions reductions through a combination of enforceable commitments and already adopted measures. During the period from 1999 to 2010, the annual and seasonal inventories for NO_X shows a reduction of 163.6 tpd and 165.4 tpd, respectively. These significant reductions take into account substantial future growth in population and activity levels and, as mentioned above, have resulted from the ongoing development and implementation of stringent District, State and Federal requirements. In 2010, approximately 26 tpd of the annual inventory and 25.5 tpd of the seasonal inventory are based on enforceable commitments. For both the annual and seasonal inventories, the NO_X enforceable commitments make up approximately 15–16% of the overall reductions since 1999. EPA believes this limited portion of NO_X reductions coming from enforceable commitments is acceptable.

The PM–10 inventories do not have the same steady decline exhibited by the NO_X inventories due to the need to further refine the backcasted inventories (see 2003 PM–10 Plan, page 4–8 to 4–9) and difficulties in achieving and maintaining direct PM–10 reductions from area-wide sources, especially from fugitive dust sources. The annual and seasonal PM–10 inventories are summarized below.

SUMMARY OF 2003 PM–10 PLAN'S PM–10 EMISSIONS INVENTORIES

[Tons per day]

	1999	2002	2005	2008	2010
Annual average inventory	324.7	329.5	335.8	340.5	350.1
Winter seasonal inventory	248.8	290.3	296.8	302.0	311.2

In order to attain these standards by 2010, the District's demonstration indicates that the annual PM–10 inventory must be reduced by 66.4 tpd and the seasonal PM–10 inventory must be reduced by 73.7 tpd. *See* 2003 PM–10 Plan, page 4–52. Approximately 61 tpd (72%) of the reductions needed from the annual inventory and 53.3 tpd (92%) of the reductions needed for the seasonal inventory are based on enforceable commitments. As shown above, a significant portion (33.8 tpd or 51% for annual and 26.7 tpd or 36% for seasonal) of the needed reductions come

[31] These previously adopted measures include CARB regulations governing area and mobile sources, SJV regulations governing stationary sources and Federal regulations such as standards that apply to diesel engines and locomotives.

[32] It is also important to note that there have been significant reductions in NO_X emissions from 1990 to 2001 (796 tons/day to 547 tons/day). These significant reductions take into account substantial growth in population and activity levels and have resulted from the ongoing development and implementation of stringent District, State and Federal requirements. 2003 PM–10 Plan, pages 4–4 to 4–9.

from the Ag CMP Program which controls agricultural fugitive dust sources, a previously unregulated category. As discussed above, measures for agricultural sources must be determined on a case-by-case basis. The Ag CMP Program is an effort that is well under way as the District has worked diligently with stakeholders (*i.e.*, farmers, EPA, CARB, and citizens) to develop the best available measures for the SJV. An enforceable commitment is necessary at this time in order to allow the additional time required to further assess the dust measures that the District will establish for agricultural sources, including determining the emissions reductions potential and the technical and economic feasibility of the measures. In addition, the majority of the PM–10 commitments have adoption and implementation dates in 2004. Given the difficulties in controlling direct PM–10 in the SJV and the near term adoption and implementation dates EPA believes the PM–10 reductions coming from enforceable commitments is acceptable.

(2) The State and District Are Capable of Fulfilling their Commitment. In many cases the new measures that are the subject to commitments are already undergoing rulemaking and have very near term adoption and implementation dates and specific requirements. For example, the enforceable commitment for the Ag CMP Program has an adoption date of April 2004 and an implementation date of July 2004 and specifically requires the development of a program that will require farmers to submit CMP plans that will reduce PM–10 emissions to the District (see section IV.D.2.(5)(i) above). Another example is the enforceable commitment for Regulation VIII which has an adoption and implementation date of September 2004 and provides a specific list of new requirements (see section IV.D.2.(5)(ii) above).

Furthermore, EPA believes that the State will be able to meet their enforceable commitment for 10 tpd of NO_X and 0.5 tpd of PM–10 in 2010 from State mobile source measures. (2003 PM–10 Plan, page 4–49 to 4–50.) Measures being considered by the State include: A pilot program to replace or upgrade emission control systems on existing passenger vehicles, Smog Check improvements, pursuing approaches to clean up the existing and new truck/bus fleet, pursuing approaches to clean up the existing heavy-duty off-road equipment fleet with retrofit controls, cleaning up existing off-road gas equipment through retrofit controls, and requiring zero emission forklifts where feasible. The State has already devoted time and resources in the development of feasible control approaches for most of these measures. Although the potential control measures are complex and difficult, the State has a long history of success in adopting new and challenging mobile source controls and achieving projected emission reductions. The State's record of accomplishment and the State's commitment of resources and progress to date on these new measures assure us that the State will meet its commitment in this plan.

Finally, we are confident that the District will be able to meet the tonnage commitment in the 2003 PM–10 Plan because the District makes a specific enforceable commitment that if it cannot achieve the emissions reductions provided by the Plan, they will "* * * adopt, submit and implement substitute rules and measures that will achieve equivalent reductions in the same adoption and implementation timeframes." SJVUAPCD Governing Board, Resolution No. 03–06–07, #10, June 19, 2003.

(3) The Commitments Are for a Reasonable and Appropriate Period of Time. The adoption, implementation, and submittal dates for the new control measures reflect a reasonable amount of time for the development and implementation of each measure. In light of the above commitments and their adoption and implementation dates and the District's discussion of their rule development schedule (2003 PM–10 Plan, Chapter 4), EPA believes that the time frame for the commitments is reasonable and appropriate.

For the above reasons, EPA is proposing to approve as one element of the attainment demonstration in the 2003 PM–10 Plan the District's enforceable commitments to adopt and implement the specified control measures and the State's enforceable commitment to achieve additional PM–10 and NO_X reductions from mobile sources. The PM–10 and NO_X emission reductions that will result from these commitments are necessary to attain the PM–10 standards by 2010, which we find to be the most expeditious attainment date practicable. Based on the previously adopted measures and these commitments, the 2003 PM–10 Plan demonstrates that the SJV will achieve sufficient reductions to attain the PM–10 standards by 2010. Final approval of these commitments would make the commitments enforceable by EPA and by citizens.

4. Enforceable Commitment for a Mid-Course Review

The District has made an enforceable commitment "* * * to conduct a mid-course review that will include an evaluation of the modeling from CRPAQS and the latest technical information (inventory, data, monitoring, etc.) to determine the level of PM–10 and PM–10 precursor emission reductions needed to attain the Federal PM–10 annual and 24-hour standards. The mid-course review will also include a complete reassessment of all Plan elements including the attainment demonstration and control measures.* * * The District commits to adopt and submit by March 31, 2006 a SIP revision based on this mid-course review." SJVUAPCD Governing Board, Resolution No. 03–06–07, #12, June 19, 2003. EPA is proposing to approve this commitment as part of the attainment demonstration under CAA sections 179(d)(3) and 189(d).

The commitment has been adopted by the District because the 2003 PM–10 Plan's attainment demonstration has limitations which are the direct result of the shortage of key input data. This lack of input data has resulted in some uncertainty regarding the amount and type (*i.e.*, which PM–10 precursors) of emissions reductions that will be necessary to attain the PM–10 standards. However, the CRPAQS will provide a more comprehensive and reliable data base for future PM–10 analyses.

The State expects that CRPAQS will provide more reliable modeling based on more refined modeling techniques and improved input data. This information should result in a more reliable determination of whether the amount of emissions reductions required in the 2003 PM–10 Plan will be sufficient for the SJV to attain the PM–10 standards expeditiously. The information will be used to establish revised attainment targets and motor vehicle budgets and to develop new control measures, if necessary, in the 2006 SIP submission.

5. Summary of Attainment Demonstration

Based on receptor modeling and proportional rollback modeling, the District's attainment demonstration for 2003 PM–10 Plan relies on emissions reductions from previously adopted measures, commitments for BACM measures, a commitment for the Indirect Source Mitigation program, and a commitment for an additional reduction of 10 tpd of NO_X and 0.5 tpd of PM–10 from State mobile sources. Also, since

the modeling has limitations due to a shortage of key input data, the Plan includes a commitment to submit a SIP revision by March 31, 2006 based on a mid-course review that will include an evaluation of the modeling from CRPAQS and the latest technical information (inventory, data, monitoring, etc.) to determine the level of emission reductions necessary to attain. EPA is proposing to approve the Plan's attainment demonstration modeling, all of the commitments necessary for attainment and the mid-course review commitment as meeting the requirements of CAA sections 179(d)(3) and 189(d).

G. Section 189(d) 5 Percent Requirement

As discussed above, areas such as the SJV which fail to meet their attainment deadlines are subject to CAA section 189(d) which requires a new attainment plan with "* * * an annual reduction in PM–10 or PM–10 precursor emissions * * * of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area."

Tables 7–1 and 7–2 of the 2003 PM–10 Plan provide two methods of demonstrating a 5% annual reduction. The methods are different, but the emissions of NO_X and PM–10 reduced each year are the same in both.[33] EPA does not believe that the method summarized in Table 7–1 satisfies the CAA section 189(d) 5% requirement because adding percentages does not achieve the necessary 5% reductions.

However, EPA does believe that the Table 7–2 "Alternative Method" is an approvable method for meeting the section 189(d) 5% requirement. This method:

- Achieves the 5% annual reduction of either PM–10 or PM–10 precursors from 2002 to 2010,
- Is consistent with the District's NO_X/PM attainment strategy for PM–10 precursors; and
- Carries forward any reductions beyond 5% towards calculating the 5% requirement for a future year.

Reliance on reductions in either PM–10 or PM–10 precursor emissions is specifically provided for in section 189(d). Since the attainment demonstration is based on a NO_X/PM strategy (see section IV.A. above), EPA believes it is reasonable to calculate the percentage of reductions required based upon NO_X reductions, and not to require reductions in the other PM–10 precursors VOC, SO_X, or ammonia for which there is either less benefit or high uncertainty toward attaining the NAAQS. Finally, EPA believes it is reasonable and beneficial to allow for any emissions reductions beyond the required 5% in one year to be carried forward in order to encourage emissions reductions as quickly as possible. Thus, the Table 7–2 Alternative Method is an acceptable method for meeting the 5% requirement of CAA section 189(d). A more detailed analysis of the annual emissions and the 5% requirement is provided in the TSD. In order to ensure that the 5% requirement is met, EPA is proposing to approve as enforceable emissions levels each of the yearly NO_X and PM–10 emissions levels found in Table 7–2 of the 2003 PM–10 Plan and summarized below.

SUMMARY OF NO_X AND PM–10 EMISSION LEVELS NECESSARY FOR SATISFYING THE 5% REQUIREMENT

Year	NO_X (tons/day)	PM–10 (tons/day)
2002	519.8	329.4
2003	493.5	329.4
2004	479.5	312.1
2005	461.8	285.5
2006	441.0	285.8
2007	420.1	285.4
2008	403.6	280.1
2009	389.1	284.5
2010	363.7	283.7

H. Reasonable Further Progress

CAA sections 172(c)(2) and 189(c)(1) require nonattainment areas to provide for reasonable further progress (RFP). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." The Addendum to the General Preamble at 42016 explains that "EPA will determine whether the annual emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM–10 NAAQS."

The 2003 PM–10 Plan implies that the RFP requirement is satisfied by meeting the 5% requirement. 2003 PM–10 Plan, Chapter 7. As discussed above, the 5% requirement is based on emission reductions in the annual average inventory. However, RFP is a separate statutory requirement and is be determined relative to attainment. Thus, in order to satisfy the RFP requirement, there must be an analysis which shows that incremental reductions towards attainment are being made for both the 24-hour and annual standards. While this analysis is not explicitly provided by the District in the 2003 PM–10 Plan, our evaluation of the attainment demonstration coupled with the expected yearly emissions reductions shows that RFP is being met. Based on our evaluation for both the 24-hour and annual PM–10 standards below, we believe that the progress achieved is reasonable in light of the Act's attainment goal and therefore propose to approve the Plan as meeting the RFP requirements in sections 172(c)(2) and 189(c)(1).

The District's control strategy relies on reductions of PM–10 precursors and primary PM–10 for both the annual and the 24-hour PM–10 standards. For each standard, the most substantial reductions in PM–10 from the control strategy are from decreases of the concentration of ammonium nitrate, vegetative burning and geological material. Smaller reductions are achieved from reductions in motor vehicle exhaust, and ammonium sulfate. There were slight increases in the concentrations of organic carbon, and tires and brakes. The specific relationships between the emission inventory and PM concentrations are documented in the 2003 PM–10 Plan, Appendix N, for each 24-hour and annual PM–10 concentration above the standard.

1. Annual RFP Demonstration

The annual average inventory is representative of the annual standard. As discussed in Chapter 7 of the 2003 PM–10 Plan and in section I above, annual reductions of PM–10 or NO_X are being achieved until the attainment year. Reductions of PM–10 and NO_X in the annual average inventory should correspond to annual incremental reductions towards the annual PM–10 standard.

2. 24-Hour RFP Demonstration

Relative to the PM–10 concentrations above the annual standard, the 24-hour PM–10 values have less contribution from geological material, and a greater contribution from ammonium nitrate and vegetative burning. Therefore, the control of PM–10 precursors and vegetative burning is relatively more effective for the 24-hour standard than for the annual standard. The 2003 PM–10 Plan provides for annual incremental reductions in NO_X emissions (page 7–3, Table 7–2), thus, this should help ensure that incremental reductions towards the 24-hour PM–10 standard are being achieved.

[33] As a result of the NO_X/PM strategy, NO_X is the only PM–10 precursor used in the 5% calculation.

I. Quantitative Milestones

CAA section 189(c)(1) also requires PM–10 plans demonstrating attainment to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP. The 2003 PM–10 Plan commits to provide the first quantitative milestone report for 2003 through 2005 (2003 PM–10 Plan, page 7–4). Thus, the next quantitative milestone report will be due for 2006 through 2008.

In addition to the District's commitment to provide an RFP Milestone Report on March 31, 2006 (90 days after the milestone date), they have also committed to a "mid-course review that will include an evaluation of the modeling from CRPAQS and the latest technical information (inventory, data, monitoring, etc.) to determine the level of PM–10 and PM–10 precursor emission reductions needed to attain the federal PM–10 annual and 24-hour standards. The mid-course review will also include a complete reassessment of all Plan elements including the attainment demonstration and control measures * * *. The District commits to adopt and submit by March 31, 2006 a SIP revision based on this mid-course review." (SJVUAPCD Governing Board, June 19, 2003, Resolution, No. 03–06–07, paragraph 12.) EPA believes this mid-course review commitment is a critical component in addressing the quantitative milestone requirement.

V. Summary of Proposed Action

EPA is proposing to approve pursuant to CAA section 110(k)(3) the following elements of the 2003 PM–10 Plan as meeting the CAA requirements applicable to serious PM–10 nonattainment areas that have failed to meet their attainment date:

(1) EPA is proposing to approve the emissions inventories as meeting the requirements of section 172(c)(3).

(2) EPA is proposing to approve the RACM/BACM demonstration for all significant PM–10 and NO_X sources in the SJV as meeting the requirements of sections 189(a)(1)(C) and 189(b)(1)(B). Final approval of this demonstration with respect to fugitive dust sources regulated by SJVUAPCD Regulation VIII would terminate all sanction, FIP, and rule disapproval implications of our February 26, 2003 action. 68 FR 8830.

(3) EPA is proposing to approve, as meeting the requirements of sections 179(d)(3) and 189(d), (a) the attainment demonstration and associated motor vehicle budgets; (b) commitments to adopt and implement new, identified stationary, area and mobile source BACM to reduce PM–10 and NO_X emissions; (c) a commitment for the Indirect Source Mitigation Program (d) a commitment for 10 tpd of NO_X and 0.5 tpd of PM–10 reductions from State mobile source measures; (e) and the commitment to submit a SIP revision by March 31, 2006 based on a mid-course review that will include an evaluation of the modeling from the CRPAQS and the latest technical information (inventory data, monitoring, *etc.*) to determine whether the level of emission reductions in the 2003 PM–10 Plan is sufficient to attain the PM–10 standards.

(4) EPA is proposing to approve under section 110(k)(3) and 301(a) as strengthening the SIP the commitments to adopt and implement VOC and SO_X measures.

(5) EPA is proposing to approve the NO_X and PM–10 emissions levels necessary to meet the 5% annual reduction requirement in section 189(d).

(6) EPA is proposing to approve the reasonable further progress demonstration as meeting the requirements of section 172(c)(2) and 189(c)(1).

(7) EPA is proposing to approve the Plan as meeting the quantitative milestones requirement in section 189(c)(1).

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state plan implementing Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501.*et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 27, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–2264 Filed 2–3–04; 8:45 am]

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Federal Register

Wednesday,
February 4, 2004

Part V

Department of Education

Office of Innovation and Improvement; Overview Information; DC School Choice Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notice

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; DC School Choice Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.370A.

DATES: *Applications Available:* February 4, 2004.

Deadline for Transmittal of Applications: March 5, 2004.

Eligible Applicants: (a) An educational entity of the District of Columbia Government.

(b) A nonprofit organization.

(c) A consortium of nonprofit organizations.

Note: To receive an award under this program, an applicant must ensure that a majority of the members of its voting board or governing organization are residents of the District of Columbia.

Estimated Available Funds: $12,505,778.

Estimated Range of Awards: $5,000,000–$12,505,778.

Estimated Average Size of Awards: $6,252,000.

Estimated Number of Awards: 1–2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The DC School Choice Incentive Program provides low-income parents residing in the District of Columbia (District) with expanded options for the education of their children. This program is part of a broader school improvement effort in the District that is founded on the belief that all education sectors—public schools, public charter schools and non-public schools—can offer quality education experiences for the District's students, and that those students who are the most economically disadvantaged have the least access to such experiences.

One or more grants will be awarded on a competitive basis to eligible applicants to establish a scholarship program to provide eligible students with expanded school choice options. Students who are residents of the District and who come from households whose income does not exceed 185 percent of the poverty line are eligible to apply for scholarships from a grantee under this program. These scholarships may be used to pay the tuition and fees and transportation expenses, if any, to enable students to attend the participating District non-public elementary or secondary school of their choice.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from section 306 of the DC School Choice Incentive Act of 2003.

Competitive Preference Priorities: For FY 2004 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 35 points to an application, depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Eligible Students (up to 15 points). The Secretary will give priority to applications from eligible entities that will most effectively give priority to eligible students who, in the school year preceding the school year in which the student would use the scholarship, attend an elementary or secondary school identified for improvement, corrective action, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6316).

Competitive Preference Priority 2—Financial Resources (up to 10 points). The Secretary will give priority to applications from eligible entities that will most effectively target resources to students and families who lack the financial resources to take advantage of available educational options.

Competitive Preference Priority 3—Range of Options (up to 10 points). The Secretary will give priority to applications from eligible entities that will most effectively provide students and families with the widest range of educational options.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed selection criteria and other non-statutory requirements. Section 437(d)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority. This is the first competition for this program under the DC School Choice Incentive Act of 2003 (Act). The Secretary and the Mayor of the District of Columbia also have informally solicited public comments on this program within the District of Columbia. Additionally, initiating a formal notice and comment process would preclude timely implementation of this program for the 2004–05 school year. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the selection criteria and other non-statutory requirements under section 437(d)(1) of GEPA. These selection criteria and other non-statutory requirements will apply to the FY 2004 grant competition only.

Program Authority: DC School Choice Incentive Act of 2003 (Title III of Division C of the Consolidated Appropriations Act, 2004).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99.

II. Award Information

Type of Award: Discretionary grants or cooperative agreements.

Estimated Available Funds: $12,505,778.

Estimated Range of Awards: $5,000,000–$12,505,778.

Estimated Average Size of Awards: $6,252,000.

Estimated Number of Awards: 1–2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An educational entity of the District of Columbia Government.

(b) A nonprofit organization.

(c) A consortium of nonprofit organizations.

Note: To receive an award under this program, an applicant must ensure that a majority of the members of its voting board or governing organization are residents of the District of Columbia.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other: Application Contents.* The Secretary may not approve an application for a grant under this program unless the application includes a detailed description of—

(a) How the entity will address the priorities described in this notice;

(b) How the entity will ensure that, if more eligible students seek admission in the scholarship program than the program can accommodate, eligible students will be selected for admission through a lottery that gives weight to students and families described in competitive preference priorities (1) and (2) elsewhere in this notice. This lottery should be designed in such a way as to maximize the number of students receiving scholarships by matching accepted students with available slots at participating schools and allow parents

of eligible students and participating schools to participate in determining the appropriate school and grade-level placements for eligible students;

(c) How the entity will ensure that if more participating eligible students seek admission to a participating school than the school can accommodate, participating eligible students will be selected for admission through a lottery. Scholarship recipients may be admitted to a participating school without regard to the lottery if they are siblings of students already admitted to, or attending, that school;

(d) How the entity will notify parents of eligible students of the expanded choice opportunities provided under the program and how the entity will ensure that parents receive sufficient information about their options to allow them to make informed decisions, including, but not limited to, information—for each participating school—about the qualifications of its teachers; the educational philosophy and available courses and programs of the school; the achievement of the school's students; student expectations (such as uniforms, discipline policy, honor code, and required classes); and the safety and school environment of the school;

(e) The activities that the entity will carry out to provide parents of eligible students with expanded choice opportunities through the awarding of scholarships;

(f) How the entity will determine the amount that will be provided to parents for the tuition and fees and for transportation expenses, if any, including how the entity will ensure compliance with the requirement that the amount of any tuition or fees charged by the school to an eligible student participating in the program does not exceed the amount of tuition and fees the school customarily charges to students who do not participate in the program;

(g) How the entity will seek out non-public elementary and secondary schools in the District to participate in the program, and will ensure that participating schools will meet the applicable requirements of the Act and provide the information needed for the entity to meet the reporting requirements of this program;

(h) How the entity will ensure that participating schools are financially responsible and will use the funds received under this program effectively;

(i) How the entity will address the renewal of scholarships to participating eligible students, including their continued eligibility; and

(j) How the entity will consult with private schools initially and throughout the planning and implementation, including consultation on how participating schools may require eligible students to abide by any rules of conduct and other requirements applicable to all other students in a school, in order to facilitate an effective and successful scholarship program for both participating students and private schools.

Note: An eligible entity receiving a grant under this program may award a scholarship, for the second or any succeeding years of a student's participation in the scholarship program, to a student who was eligible for the first year of the scholarship and comes from a household whose income has subsequently increased but does not exceed 200 percent of the poverty line.

Additionally, an eligible entity must assure that it will comply with all requests regarding the evaluation carried out under section 309 of the Act. Additional information regarding this evaluation can be found in the application package for this program.

An eligible entity must be willing and able to work with other entities affiliated with the Federal and District governments, as well as other organizations that might conduct activities integral to the success of the program, including, as appropriate, incorporating and building on any preparatory work conducted by other interested organizations, such as outreach activities to families of students eligible to participate in the program and non-public schools.

Definitions. As used in this program:

(a) *Elementary School* means an institutional day or residential school that provides elementary education, as determined under District of Columbia law.

(b) *Eligible Student* means a student who—

(1) Is a resident of the District of Columbia; and

(2) Comes from a household whose income does not exceed 185 percent of the poverty line applicable to a family of the size involved.

(c) Parent includes a legal guardian or other person standing *in loco parentis* (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

(d) *Poverty Line* means the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of the size involved.

(e) *Secondary School* means an institutional day or residential school that provides secondary education, as determined under District of Columbia law, except that the term does not include any education beyond grade 12.

IV. Application and Submission Information

1. *Address to Request Application Package:* Iris Lane, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C156 FB6, Washington, DC 20202–5961. Telephone: (202) 260–1999 or by e-mail: *iris.lane@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and priorities that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″3 margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, or letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: February 4, 2004.

Deadline for Transmittal of Applications: March 5, 2004.

Note: We are requiring that applications for grants under this program be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information about how to access the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV, Other Submission Requirements, in this notice.

The application package for this program specifies the hours of operation of the e-Application Web site. If you are requesting a waiver of the electronic submission requirement, the dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are also in the application package.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions: Use of Funds.*

(a) *Scholarships.*

(1) A grantee must use grant funds to provide eligible students with scholarships to pay the tuition. fees, and transportation expenses, if any, to enable them to attend a participating District non-public elementary or secondary school of their choice. A grantee must ensure that the amount of any tuition or fees charged by a school to an eligible student participating in the program does not exceed the amount of tuition or fees that the school customarily charges to students who do not participate in the program. An entity that receives an award under this program will be responsible for ensuring compliance with this requirement by each participating school.

(2) A grantee may award scholarships in varying amounts (subject to paragraph (b) of this section), with larger amounts going to eligible students with the greatest need.

(b) *Annual Limit on Amount of Scholarship:* The amount of assistance provided to any eligible student by a grantee with funds received under this program may not exceed $7,500 for any academic year.

(c) *Administrative Expenses:* A grantee may not use more than 3 percent of the amount provided under the grant each year for the administrative expenses of carrying out its program.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for grants under the DC School Choice Incentive Program—CFDA Number 84.370A be submitted electronically using the e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Iris Lane, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C156, Washington, DC 20202–5961. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The DC School Choice Incentive Program—CFDA Number 84.370A is one of the programs included in the pilot project. If you are an applicant under the DC School Choice Incentive Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand

delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for The DC School Choice Incentive Program at: *http://e-grants.ed.gov*.

V. Application Review Information

Selection Criteria: Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score an application may receive based on the priority points and the selection criteria is 165 points. The selection criteria for this program are as follows:

(a) *Selection of students* (up to 15 points). In determining the quality of the applicant's plan for the selection of students to receive scholarships, the Secretary considers the extent to which—

(i) The application provides a description of the lottery that would be used to make selections of scholarship applicants in the event that the scholarship program is oversubscribed and for selecting students to attend a participating school if more students apply to, and are accepted for enrollment by, that school than it can accommodate;

(ii) The application provides assurances and appropriate documentation that the applicant, if funded, will cooperate with the evaluation contractor selected by the Department and the District of Columbia Government in planning and implementing the lottery for selecting program participants;

(iii) The selection process gives priority to applicants who attend a District elementary or secondary school identified for school improvement, corrective action, or restructuring under section 1116 of the ESEA; and

(iv) The selection process gives priority to applicants whose families lack the financial resources to take advantage of available educational options.

(b) *Notification of parents* (up to 20 points). In determining the quality of the applicant's plan to notify parents about the scholarships, the Secretary considers the extent to which the application—

(i) Describes a plan for outreach such as direct mailings, forums, radio, television and print advertising to inform eligible students and their parents about the availability of scholarships and the procedures for applying to the scholarship program; and

(ii) Provides evidence that parents will receive sufficient information about their options to allow them to make informed decisions, including, but not limited to, information on each participating school about the qualifications of its teachers; the educational philosophy and available courses and programs of the school; the achievement of the school's students; student expectations (such as uniforms, discipline policy, honor code, and required classes); and the safety and school environment of the school.

(c) *Amount of scholarship* (up to 10 points). In determining the quality of the applicant's plan for establishing the amount of a scholarship to an eligible student, the Secretary considers the extent to which the applicant's methods—

(i) Provides a mechanism to award scholarships for tuition and fees, and transportation expenses, if any, in larger amounts to those eligible students with the greatest need, provided they do not exceed the maximum annual scholarship amount; and

(ii) Ensure that the amount of tuition and fees charged by a participating school to a scholarship student under the program will not exceed the amount of tuition and fees that the school customarily charges to students who do not participate in the program.

(d) *Participating schools* (up to 20 points). In determining the quality of the applicant's plan for identifying participating non-public schools, the Secretary considers the extent to which the application—

(i) Describes the applicant's plan to seek out non-public elementary and secondary schools that operate lawfully in the District, to participate in the program during its initial year and subsequent years;

(ii) Describes how the applicant will ensure that participating schools will comply with the requirements of the Act and will provide the information needed for the applicant to meet the reporting requirements of the Act; and

(iii) Describes how the applicant will ensure that participating schools are financially responsible and will use the funds received under this title effectively.

(e) *Renewal of scholarships* (up to 10 points). In determining the quality of the applicant's plan for the renewal of scholarships, the Secretary considers the applicant's methods for determining the eligibility of participating student to continue in the program.

(f) *Quality of project personnel* (up to 15 points). In determining the quality of the personnel of the proposed project, the Secretary considers the qualifications, including relevant training and experience, of the project director, other key personnel, and any project consultants in such areas as—

(i) Working with schools, parents, and government officials;

(ii) Operating a scholarship program; and

(iii) Establishing and maintaining record-keeping requirements.

(g) *Organizational capability* (up to 20 points). In determining the applicant's organizational capability, the Secretary considers—

(i) The amount and quality of experience the applicant has with the types of activities it proposes to undertake in its application, such as conducting outreach, administering funds, tracking scholarships, and ensuring that scholarship funds are used for the payment of tuition and fees and transportation expenses, if any, in accordance with the Act; and

(ii) The applicant's financial soundness.

(h) *Reports* (up to 10 points). In determining the quality of the applicant's reporting plan, the Secretary considers the extent to which the applicant's plan for assembling the information and submitting activities reports, achievement reports, and reports to parents complies with the requirements under section 310 of the Act.

(i) *Collection of baseline data* (up to 10 points). In determining the quality of the applicant's plan to collect baseline data, the Secretary considers the extent to which the applicant documents how it will cooperate with the evaluation contractor to collect baseline data, including, but not limited to, student and parent demographics and income,

parent perception of a student's current school (including safety), parent awareness of their choice options, contact information for parents, and consent forms for ongoing data collection.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) *Requirements under EDGAR.* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

(b) *Requirements under the Statute.* (1) *Activities Reports.* Each grantee receiving funds under this program during a year shall submit a report to the Secretary not later than July 30 of the following year regarding the activities carried out with the funds during the preceding year.

(2) *Achievement Reports.* (i) *In general.* In addition to the reports required under paragraph (1), each grantee shall, not later than September 1 of the year during which the second academic year of the grantee's program is completed and each of the next 2 years thereafter, submit a report to the Secretary regarding the data collected in the previous 2 academic years concerning—

(A) The academic achievement of students participating in the program;

(B) The graduation and college admission rates of students who participate in the program, where appropriate; and

(C) Parental satisfaction with the program.

(ii) *Prohibiting disclosure of personal information.* No report under this subsection may contain any personally identifiable information.

(3) *Reports to Parent.* (i) *In general.* Each grantee shall ensure that each school participating in the grantee's program under this program during a year reports at least once during the year to the parents of each of the school's students who are participating in the program on—

(A) The student's academic achievement, as measured by a comparison with the aggregate academic achievement of other participating students at the student's school in the same grade or level, as appropriate, and the aggregate academic achievement of the student's peers at the student's school in the same grade or level, as appropriate; and

(B) The safety of the school, including the incidence of school violence, student suspensions, and student expulsions.

(ii) *Prohibiting disclosure of personal information.* No report under this subsection may contain any personally identifiable information, except as to the student who is the subject of the report to that student's parent.

4. *Performance Measures:* The long-term performance indicator for this program is whether, at the end of the program, the student achievement gains of participants are greater than that of students in control or comparison groups. Data for the performance measure will be collected through the program evaluation.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Iris Lane, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C156, Washington, DC 20202–5961. Telephone: (202) 260–1999 or by e-mail: *iris.lane@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: January 30, 2004.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 04–2286 Filed 2–3–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
February 4, 2004

Part VI

Federal Trade Commission

16 CFR Parts 315 and 456
Contact Lens Rule; Ophthalmic Practice Rules; Proposed Rule and Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 315 and 456

RIN 3084–AA95

Contact Lens Rule; Ophthalmic Practice Rules

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: In this document, the Federal Trade Commission (the "Commission" or "FTC") issues a Notice of Proposed Rulemaking seeking comment on its proposed rule to implement the Fairness to Contact Lens Consumers Act ("the Act"), which provides for the availability of contact lens prescriptions to patients and the verification of contact lens prescriptions by prescribers. This document also proposes two clerical amendments to the Commission's Ophthalmic Practice Rules, which are designed to clarify the distinction between those Rules and the proposed Contact Lens Rule.

DATES: Public comments must be received on or before April 5, 2004.

ADDRESSES: Comments should refer to "Contact Lens Rule, Project No. R411002." Comments filed in paper form should be mailed or delivered, as prescribed in the **SUPPLEMENTARY INFORMATION** section, to the following address: Federal Trade Commission/ Office of the Secretary, Room 159–H, (Annex A) 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments via electronic mail. Comments filed in electronic form (except comments containing any confidential material) should be sent, as prescribed in the **SUPPLEMENTARY INFORMATION** section, to the following e-mail box: *contactlensrule@ftc.gov*. All Federal Government agency rulemaking initiatives are also available online at *http://www.regulations.gov*.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, Attention: Desk Officer for Federal Trade Commission, as well as to the FTC Secretary at the address above.

FOR FURTHER INFORMATION CONTACT: Thomas Pahl or Kial Young, (202) 326–2738, *contactlensrule@ftc.gov*, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Fairness to Contact Lens Consumers Act

On December 6, 2003, President Bush signed the Fairness to Contact Lens Consumers Act ("the Act").[1] Among other things, the Act requires that prescribers—such as optometrists and ophthalmologists—provide contact lens prescriptions to their patients upon the completion of a contact lens fitting.[2] The Act also mandates that prescribers verify contact lens prescriptions to third-party contact lens sellers who are authorized by consumers to seek such verification.[3] Further, the Act directs the Commission to conduct a study to examine the strength of competition in the sale of prescription contact lenses, including an examination of several specified issues.[4]

The Act directs the Commission to prescribe implementing rules.[5] Any violation of the Act or its implementing rules constitutes a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices.[6] The Act also authorizes the Commission to investigate and enforce the Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as a trade regulation rule under the Federal Trade Commission Act.[7]

The Commission already enforces the Ophthalmic Practice Rules.[8] These Rules primarily require the release of eyeglass prescriptions to patients at the completion of an eye examination, and prohibit eye care practitioners from placing certain conditions on such release. The Commission today proposes two clerical amendments, set forth in sections III and XI below, to clarify the relationship between the Ophthalmic Practices Rules and the proposed rule under the Fairness to Contact Lens Consumers Act.

II. Overview of the Proposed Contact Lens Rule

Nearly 36 million Americans—almost 13% of all Americans—wear contact lenses.[9] The contact lens market in the United States is a multi-billion dollar market. There are numerous manufacturers of contact lenses and many different channels of distribution, including traditional eye care practitioners (*e.g.*, ophthalmologists and optometrists), national and regional optical chains, mass merchants (*e.g.*, Wal-Mart and Costco), and mail order and Internet firms.

The contact lens market has undergone significant change in recent years. The development of disposable soft contact lenses, followed by the growth of "alternative" retail sources of contact lenses (*e.g.*, non-eye care practitioners), including mail order and Internet firms, and mass merchants, has given consumers a greater choice of sellers and means of delivery when they purchase contact lenses. Such choice can have important benefits to consumers. Competition among contact lens sellers benefits consumers through lower prices, greater convenience, and improved product quality.

Key to consumer choice among contact lens sellers is the availability of the contact lens prescription. To this end, the proposed Rule is designed to implement the Act's specific provisions regarding the release and verification of contact lens prescriptions, and otherwise to further the Act's goals of ensuring the availability of such prescriptions so that consumers can choose among sellers when purchasing contact lenses. The proposed Rule tracks the language of the Act very closely:

- Section 315.1 describes the scope of the regulations under the Act.
- Section 315.2 sets forth definitions for the terms used in the proposed Rule.
- Section 315.3 requires prescribers to provide patients with a copy of their contact lens prescription immediately upon completion of a contact lens fitting, and to provide or verify contact lens prescriptions to any third party designated by a patient. This section further prohibits prescribers from placing certain conditions on the release or verification of a contact lens prescription.
- Section 315.4 limits the circumstances under which a provider can require payment for an eye exam prior to releasing a contact lens prescription to a patient.
- Section 315.5 requires contact lens sellers to either obtain a copy of a patient's prescription, or verify the

[1] 15 U.S.C. 7601–7610 (Pub. L. 108–164).
[2] *Id.* at 7601.
[3] *Id.* at 7601, 7603.
[4] *Id.* at 7609.
[5] *Id.* at 7607.
[6] *Id.* at 7608.
[7] *Id.*
[8] 16 CFR part 456.
[9] *See* Health Products Research (VIS)—Annual 2000 Year-End Consumer Contact Lens Survey (*cited in* "Trends in Contact Lenses & Lens Care," The Bausch & Lomb Annual Report to Vision Care Professionals (Dec. 2001)).

prescription, before selling contact lenses, and sets forth procedures for obtaining such verification. This section also addresses the issue of private label contact lenses.

- Section 315.6 sets minimum expiration dates for contact lens prescriptions, with an exception for cases involving the prescriber's medical judgment with respect to a patient's ocular health.
- Section 315.7 prohibits certain specified parties from representing that contact lenses may be obtained without a prescription.
- Section 315.8 prohibits prescribers from using or requiring patients to sign any waiver or disclaimer of liability for the accuracy of an eye examination.
- Section 315.9 establishes that violations of the proposed Rule will be treated as violations of a rule defining an unfair or deceptive act or practice under the FTC Act.
- Section 315.10 addresses the proposed Rule's severability.

Following is an overview of the proposed Rule, with brief discussions where needed. The full text of the proposed Rule appears in section X of this document.

Section 315.1 Scope of Regulations

Part 315, which shall be called the "Contact Lens Rule," implements the Fairness to Contact Lens Consumers Act, codified at 15 U.S.C. 7601–7610. The rules in part 315 of Title 16 of the Code of Federal Regulations address release and verification of contact lens prescriptions and related issues in implementing the Act. In contrast, the rules in part 456 of Title 16 (the "Ophthalmic Practices Rules" or "Eyeglass Rule") address the release of eyeglass prescriptions and related issues. See 16 CFR part 456.

Section 315.1 describes the basis for, and the general scope of, the regulations in part 315. It indicates that part 315 governs contact lens prescriptions and related issues, and clarifies that rules applicable to eyeglass prescriptions are found in part 456.

Section 315.2 Definitions

The Act states that a prescription is verified if, among other things, the prescriber fails to communicate with the seller within "eight business hours, or a similar time as defined by [the FTC]," after receiving proper verification information from the seller. Eight business hours" is not expressly defined in the Act. The purpose of the time period, however, is to give prescribers an adequate period of time during normal office hours to act upon a prescription verification request, while at the same time allowing sellers to fill customer orders expeditiously.

Business hour is defined under the proposed Rule to mean an hour between 9 a.m. and 5 p.m., during a weekday (Monday through Friday), excluding Federal holidays. For purposes of section 315.5(c)(3), "eight (8) business hours" shall begin at the time that the seller provides the prescription verification request to the prescriber and conclude after eight (8) business hours have elapsed, except that the period for verification requests received during non-business hours shall begin at 9 a.m. on the next weekday that is not a Federal holiday.

A few examples may help clarify how eight business hours would be calculated under the proposed definition: (1) A response to a verification request received at 10:30 a.m. on Monday morning would be required by 10:30 a.m. on Tuesday morning; (2) a response to a verification request received at 10 p.m. on Monday night would be required by 9 a.m. on Wednesday morning, *i.e.*, eight business hours after the verification period commences at 9 a.m. on Tuesday morning; (3) a response to a verification request received at 2 p.m. on Saturday afternoon would be required by 9 a.m. on Tuesday morning, *i.e.*, eight business hours after the verification period begins at 9 a.m. on Monday morning; and (4) a response to a verification request received at 10:30 a.m. in the morning on Columbus Day (a Monday) would be required by 9 a.m. on Wednesday morning, *i.e.*, eight business hours after the verification period commenced at 9 a.m. on Tuesday morning.

Commission means the Federal Trade Commission.

Contact lens fitting means the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required, and such term may include:

(a) an examination to determine lens specifications;

(b) except in the case of a renewal of a contact lens prescription, an initial evaluation of the fit of the contact lens on the eye; and

(c) medically necessary follow-up examinations.

This definition is taken almost verbatim from the Act.

Contact lens prescription means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses, including the following:

(a) name of the patient;

(b) date of examination;

(c) issue date and expiration date of prescription;

(d) name, postal address, telephone number, and facsimile telephone number of prescriber;

(e) power, material or manufacturer or both of the prescribed contact lens;

(f) base curve or appropriate designation of the prescribed contact lens;

(g) diameter, when appropriate, of the prescribed contact lens; and

(h) in the case of a private label contact lens, name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name.

This definition is taken almost verbatim from the Act.

Direct communication, as used in section 315.5, includes a completed communication through telephone, facsimile, or electronic mail. This definition sets forth the ways in which direct communication, as required in section 315.5 of the proposed Rule, may occur—by telephone, facsimile, or electronic mail. The definition further requires that the communication involve a completed communication with the intended recipient. Thus, direct communication by telephone would require reaching and speaking with the intended recipient, or leaving a voice message on the telephone answering machine of the intended recipient. Similarly, direct communication by facsimile or electronic mail would require that the intended recipient receive the facsimile or electronic mail message.

Issue date, as used in section 315.6, means the date on which the patient receives a copy of the prescription. This definition is taken directly from the Act.

Ophthalmic goods are contact lenses, eyeglasses, or any component of eyeglasses. This term is not defined in the Act, and so it has been defined based on similar language in the Eyeglass Rule.

Ophthalmic services are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination. This term is not defined in the Act, and so it has been defined based on similar language in the Eyeglass Rule.

Prescriber means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food

and Drug Administration. This definition is taken directly from the Act.

Private Label Contact Lenses mean contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers. This definition is derived from the Act.

Section 315.3 Availability of Contact Lens Prescriptions to Patients

The Act requires prescribers to provide patients with a copy of their contact lens prescription upon completion of a contact lens fitting. It also mandates that prescribers provide or verify contact lens prescriptions to third parties authorized to act on behalf of patients. The Act further prohibits prescribers from refusing to release or verify a prescription unless their patients purchase contact lenses from them, pay a fee in addition to or as part of a examination fee, or sign a waiver or release of liability. Section 315.3 of the proposed Rule is taken almost verbatim from the Act.

Section 315.4 Limits on Requiring Immediate Payment

The Act provides that prescribers can require patients to pay a fee for an eye examination, fitting, and evaluation before the release of a contact lens prescription only if the prescriber requires immediate payment for an examination that reveals that the patient does not need contact lenses or other ophthalmic goods. The Act treats presentation of proof of insurance coverage as a type of payment. Section 315.4 of the proposed Rule is taken directly from the Act.

Section 315.5 Prescriber Verification

(a) Prescription Requirement

The Act states that a seller cannot sell contact lenses to a customer unless the seller has obtained a copy of the patient's contact lens prescription, or verified the prescription through a direct communication with the prescriber. Section 315.5(a) of the proposed Rule incorporates these preconditions verbatim from the Act.

(b) Information for Verification

The Act sets forth with specificity the information that a seller must provide to the prescriber when seeking verification of a contact lens prescription. Under the Act, the seller must provide the prescriber with the following information through direct communication: (1) The patient's full name and address; (2) the contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate; (3) the quantity of lenses ordered; (4) the date of the patient request; (5) the date and time of the verification request; and (6) the name of a contact person at the seller's company, including a facsimile and a telephone number. Section 315.5(b) of the proposed Rule incorporates these requirements verbatim from the Act.

(c) Verification Events

The Act sets forth three circumstances under which a seller can consider a prescription verified and proceed to sell contact lenses to its customer. Under the Act, a prescription is verified if: (1) The prescriber has confirmed the prescription is accurate by direct communication with the seller; (2) the prescriber has informed the seller that the prescription is inaccurate and provides the accurate prescription; or (3) the prescriber fails to communicate with the seller within eight (8) business hours (or a similar time period defined by the Commission) after receiving a proper verification request from the seller.

Section 315.5(c) sets forth these circumstances, generally repeating the language of the Act. This provision clarifies, however, that prescribers must use a method of direct communication (*i.e.*, telephone, facsimile, or e-mail) in conveying their response to the seller's verification request. The method of direct communication used by the prescriber to respond need not be the same method of direct communication that the seller used to send a verification request. For example, an eye care practitioner may respond by telephone to a seller's fax seeking verification. The proposed Rule also does not include any time period for responding to a verification request other than the eight business hours mentioned in the Act.

(d) Invalid Prescription

The Act articulates the obligations of the parties if a seller submits a prescription for verification that the prescriber determines is invalid. The Act mandates that the prescriber must specify for the seller the basis for concluding that any prescription is invalid or inaccurate, and, if the prescription is inaccurate, the prescriber must provide the correct information to the seller. The Act precludes a seller from filling a contact lens prescription that the prescriber has reported is inaccurate, expired, or otherwise invalid, except that a seller may fill an inaccurate prescription that the prescriber has corrected. Section 315.5(d) of the proposed Rule follows the procedures set forth in the Act for addressing invalid prescriptions.

(e) No Alteration of Prescription

The Act prohibits a seller from altering a contact lens prescription of its customer. The purpose of this requirement apparently is to make certain that consumers receive the contact lenses specified in their prescription. The Act, however, contains an exception to address so-called "private label" lenses. Some manufacturers make identical contact lenses that are sold under multiple labels, including the private labels of particular providers. Prescribers may be able to restrict consumer choice by writing prescriptions that are limited to specified.private label contact lenses, even though these lenses are identical to other lenses made by the same manufacturer and sold by other sellers. To address such a restriction, the Act allows sellers to fill a prescription with identical lenses manufactured by the same company even though the lenses are being sold under a different label than that specified on the prescription. Section 315.5(e) follows the Act in barring sellers from altering prescriptions and in allowing them to substitute identical contact lenses for a private label that a prescriber has specified on a prescription.

(f) Recordkeeping Requirement

The Act requires sellers to maintain records of all direct communications relating to prescription verification. Section 315.5(f) proposes to require that sellers maintain records of such communications, as well as any prescriptions they receive from patients or prescribers, for a period of at least three years, and to have those records available for inspection by the Federal Trade Commission. The purpose of these recordkeeping requirements is to allow the Commission to investigate whether there has been a rule violation and to seek civil penalties for any such violations. Given that the statute of limitations for obtaining civil penalties for rule violations under the FTC Act is three years,[10] a three-year document retention requirement would assist the Commission in investigating and challenging rule violations. Nevertheless, the FTC is particularly interested in receiving comments describing and documenting the costs and benefits of maintaining such records for three years.

Section 315.5(f)(1) requires that sellers keep copies of prescriptions or fax copies of prescriptions they receive directly from a patient or a prescriber. The purpose of this requirement is to

[10] Section 19(d) of the FTC Act, 15 U.S.C. 57b(d).

document that it was permissible for the seller to sell contact lenses to the customer under section 7603(a)(1) of the Act.

Section 315.5(f)(2), consistent with section 7603(b) of the Act, also mandates that sellers must maintain documentation of verification requests. The documents that the proposed rules would require sellers to preserve vary based on the means of direct communication the seller employed to seek verification. If the seller communicates through facsimile or e-mail, it must maintain a copy of the verification request and a confirmation of the completed communication of that request, including the date and time the communication was completed. On the other hand, if the seller communicates through telephone, the seller must maintain a telephone log: (1) Describing the information that the seller provided to the prescriber (*e.g.*, noting that the seller read the required prescription information to the prescriber); (2) recording the date and time the telephone call was completed; and (3) indicating how the call was completed (*e.g.*, by speaking with someone directly (and if so whom) or by leaving a message). In addition, for communications by telephone, the seller must retain copies of its telephone bills.

Section 315.5(f)(3) further mandates that the seller must maintain copies of all prescription verification responses from prescribers. Again, the specific documents to be maintained differ based on the method of direct communication that the prescriber used to contact the seller. If the response to a verification request occurs via facsimile or e-mail, the seller must preserve a copy of the communication and a record of the time and date it was received. If the response to a verification request is communicated via telephone, then the seller must maintain a telephone log describing the information communicated and the date and time that it was received.

Section 315.6 Expiration of Contact Lens Prescriptions

The Act provides that if the expiration date for a contact lens prescription under state law is one year or more after its issue date, then the prescription shall expire on the date specified by State law. The Act also states that if the expiration date for a contact lens prescription under State law is less than one year after its issue date, or the State law does not specify an expiration date, then the prescription shall expire not less than one year after its issue date. Notwithstanding these expiration standards, the Act further provides that a prescriber may specify a different expiration date based on his or her medical judgment with respect to the ocular health of the patient. The purpose of establishing a minimum expiration date as a matter of Federal law is to prevent prescribers from selecting a short expiration date for a prescription that unduly limits the ability of consumers to purchase contact lenses from other sellers, unless legitimate medical reasons justify setting such an expiration date.

Section 315.6(a) of the proposed Rule closely tracks the expiration date requirements set forth in the Act, as described above. Section 315.6(b) sets forth the procedures that prescribers must follow if they determine that legitimate medical reasons warrant an expiration date of less than one year. Specifically, prescribers must document these medical reasons in the patient's medical record with sufficient detail to allow a qualified medical professional to determine the reasonableness of the shorter expiration date. As with the documents that sellers must maintain pursuant to section 315.5(f) of the proposed Rule, section 315.6(b) requires that prescribers maintain these medical records for at least three years and that they must be available for inspection by the Federal Trade Commission.

Section 315.7 Content of Advertisements and Other Representations

The Act provides that any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription. Section 315.7 incorporates this provision verbatim from the Act.

Section 315.8 Prohibition of Certain Waivers

The Act provides that a prescriber may not place on the prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The Act further provides that this provision does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription. Section 315.8 incorporates these provisions verbatim from the Act.

Section 315.9 Enforcement

The Act provides that any violation of the Act or rules implementing the Act shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices. The Act further provides that the Commission will enforce its implementing rules in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* Section 315.9 expressly incorporates these provisions from the Act.

Section 315.10 Severability

Section 315.10 states that the provisions of the Contact Lens Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it thus is the Commission's intention that the remaining provisions will continue in effect.

III. Overview of the Proposed Clerical Amendments to the Ophthalmic Practice Rules (16 CFR Part 456)

The Commission enforces the Ophthalmic Practice Rules, 16 CFR part 456, which primarily address acts and practices related to eyeglasses, not contact lenses. To clarify the relationship between the Ophthalmic Practice Rules and the proposed Contact Lens Rule, the Commission hereby proposes two clerical amendments to the Ophthalmic Practice Rules. The first amendment is to change the title of the Ophthalmic Practices Rules to "Ophthalmic Practice Rules (Eyeglass Rule)." The second amendment is to add to the Ophthalmic Practice Rules a cross-reference to the Contact Lens Rule. A similar cross-reference to the Ophthalmic Practice Rules is included in section 315.1 of the proposed Contact Lens Rule. The Commission believes modifying the title of the Ophthalmic Practices Rules to include a reference to eyeglasses and including cross-references in both set of rules will help direct businesses and consumers to applicable regulatory provisions.[11]

IV. Invitation to Comment

Comments from members of the public are invited, and may be filed with the Commission in either paper or electronic form. The Commission will give consideration to any written comments concerning the proposed

[11] Because the proposed amendments are clerical, not substantive, in nature, they are exempt from the rulemaking requirements that would apply to any substantive amendments to the Ophthalmic Practice Rules. *See* 18 U.S.C. 57(d)(1)(B). Nonetheless, in an exercise of its discretion, the Commission seeks comment on the proposed amendments in conjunction with the comments it seeks on the proposed Contact Lens Rule.

Contact Lens Rule and the clerical amendments to the Ophthalmic Practice Rules submitted on or before April 5, 2004.

A public comment filed in paper form should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, (Annex A) 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [12]

A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to an e-mail message sent to the following e-mail box: *contactlensrule@ftc.gov*.

Regardless of the form in which they are filed, all timely comments will be considered by the Commission, and will be available (with confidential material redacted) for public inspection and copying on the Commission Web site at *http://www.ftc.gov* and at its principal office. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives, before placing those comments on the FTC Web site.

V. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VI. Paperwork Reduction Act

The Commission has submitted this proposed Rule and a Supporting Statement for Information Collection Provisions to the Office of Management and Budget ("OMB") for review under the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501–3517. As required by the Fairness to Contact Lens Consumers Act, the proposed Rule imposes certain disclosure and recordkeeping requirements on contact lens prescribers and sellers. Specifically, the Rule requires prescribers to provide a copy of a patient's contact lens prescription to the patient or an authorized third party upon completion of a contact lens fitting, and further requires prescribers to document in their patients' records the medical reasons for setting a contact lens prescription expiration date of less than one year.[13] In addition, the Rule requires contact lens sellers to maintain records for three years of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, which they receive directly from customers or prescribers.[14]

The Commission staff estimates the paperwork burden of the Act and proposed Rule, based on its knowledge of the eye care industry. The staff believes there will be some burden on individual prescribers to provide contact lens prescriptions, although it involves merely writing a few pieces of information onto a slip of paper and handing it to the patient, or perhaps mailing or faxing it to a third party. The burden of documenting the medical reasons for setting a prescription expiration date shorter than one year will be minimal, because such expiration dates presumably will be set in a relatively limited number of cases, and because such records are likely kept in the ordinary course of business in any event. In addition, there will be some recordkeeping burden on contact lens sellers—including retaining prescriptions or records of "direct communications"—pertaining to each sale of contact lenses to consumers who received their original prescription from a third party prescriber.

Overall, the Commission staff has estimated that the average annual burden during the three-year period for which OMB clearance is sought will be 900,000 burden hours. The estimated annual labor cost associated with these paperwork burdens is $28.2 million. Specifically, the staff estimates that prescribers will spend an average of one (1) minute providing each prescription to a patient or authorized third party. Based on its knowledge of the industry, the staff estimates that there are 36 million contact lens wearers in the United States who visit their eye care practitioner annually, and thus prescribers will spend 600,000 hours complying with the disclosure requirement [(36 million × 1 minute) / 60 minutes = 600,000].[15] At an average wage for prescribers of $42.00 per hour,[16] complying with this requirement imposes an estimated $25.2 million labor cost burden on prescribers [$42.00 × 600,000 hours = $25.2 million].[17] In addition, the staff estimates that contact lens sellers will spend an average of five (5) minutes per sale of contact lenses complying with the recordkeeping requirements. Based on its knowledge of the industry, the staff estimates that approximately 10% of contact lens sales (*i.e.*, sales by mail order and Internet-based sellers) will be subject to the recordkeeping requirements, 3.6 million consumers' prescriptions or verifications will need to be retained, for a total of 300,000 hours spent on recordkeeping [(3.6 million × 5 minutes) / 60 minutes = 300,000 hours]. At an average wage for clerical personnel of $10.00 per hour, complying with this requirement imposes an estimated $3 million labor cost burden on contact lens sellers [$10.00 × 300,000 hours = $3 million].[18]

The Commission invites comments that will enable it to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

[12] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[13] *See* proposed Rule sections 315.3(a), 315.6(b)(1); *see also* 15 U.S.C. 7601(a),-7604(b)(1).

[14] *See* proposed Rule section 315.5(f); see also 15 U.S.C. 7603(b).

[15] The staff estimates that prescribers will not spend any additional time complying with the recordkeeping requirement that they record the medical reasons for setting a prescription expiration date shorter than one year. This is because instances of shorter expiration dates will occur relatively infrequently and the required medical information is likely to be recorded in the ordinary course of business in any event.

[16] The Bureau of Labor Statistics reports an average wage for salaried optometrists of $42.00 per hour.

[17] This estimate overstates the actual burden, in fact, because prescribers in more than two-thirds of the States already provide prescriptions to at least some of their patients as required by State Law.

[18] Again, this estimate overstates that actual burden, because some mail order and Internet-based contact lens sellers already maintain records relating to contact lens prescriptions and verification.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The FTC does not expect that the proposed Contact Lens Rule will have a significant economic impact on a substantial number of small entities. The Fairness to Contact Lens Consumers Act [19] expressly mandates most, if not all, of the proposed Rule's requirements, and thus accounts for most, if not all, of the economic impact of the proposed Rule. In any event, the burdens most likely to be imposed on small entities (which are likely to be contact lens prescribers)—such as providing contact lens prescriptions to patients or their agents, recording the medical reasons for setting prescription expiration dates of less than one year, and verifying prescription information—are likely to be relatively small. The more significant burdens imposed by the Rule likely will fall primarily on larger sellers of contact lenses, which are more likely to be seeking verification of prescriptions and thus triggering the Act's more significant recordkeeping requirements.

This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis.

A. Description of the Reasons That Action by the Agency Is Being Considered

The Fairness to Contact Lens Consumers Act directs the Commission to prescribe rules implementing the Act not later than 180 days after the Act takes effect on February 4, 2004.[20] Accordingly, the Commission has prepared the proposed Contact Lens Rule announced in this document.

B. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules

As set forth above, the objective of the proposed Contact Lens Rule is to implement the requirements of the Fairness to Contact Lens Consumers Act. The legal basis for the proposed Rule is the Act itself, 15 U.S.C. 7601–7610.

C. Description of and, Where Feasible, Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

In general, the proposed Rule applies to both "prescribers" and "sellers" of contact lenses. The FTC staff believes that many prescribers will fall into the category of small entities (*e.g.*, Offices of Optometrists less than $6 million in size), but that, for the most part, sellers subject to the Rule's recordkeeping requirements likely will be larger businesses (*e.g.*, Mail Order Houses or Electronic Shopping entities greater than $21 million in size).[21] Determining a precise estimate of the number of small entities covered by the Rule's disclosure and recordkeeping requirements is not readily feasible. The Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

As mandated by the Act, the proposed Rule imposes disclosure and recordkeeping requirements, within the meaning of the Paperwork Reduction Act, on contact lens prescribers and sellers. With respect to disclosure, the Rule requires prescribers to provide patients with a copy of their contact lens prescription upon completion of a contact lens fitting, and to provide such prescriptions to third parties authorized to act on behalf of patients.[22]

The Rule also implements several recordkeeping requirements. First, in cases in which a prescriber sets a contact lens prescription expiration date shorter than one year, the prescriber must document in the patient's record the medical reasons justifying the shorter expiration date.[23] Section 315.5(f) of the proposed Rule requires that such records be kept for three (3) years. Second, the Act requires sellers to maintain records of all direct communications relating to prescription verification.[24] Accordingly, section 315.5(f) of the proposed Rule requires that sellers maintain records of such communications, as well as prescriptions they receive directly from the patient or prescriber, for a period of at least three years. The specific records a seller must retain vary depending on the manner of communication. If the communication occurs through facsimile or email, the seller must retain a copy of the verification request, a confirmation of the completed communication of that request (including the date and time the communication was completed), and any response from the provider. If the communication occurs through telephone, the required record consists of a telephone log describing the information provided, the date and time of the telephone call, and how the call was completed (*e.g.*, by speaking with someone directly or leaving a message). For telephone communications the seller also must retain its telephone bill. The proposed Rule requires that the records be available for inspection by the Commission, but does not otherwise require production of the records.

The Commission is seeking clearance from the Office of Management and Budget ("OMB") for these requirements and the Commission's Supporting Statement submitted as part of that process will be made available on the public record of this rulemaking. As set forth in section VI above, the Commission staff has estimated that the proposed Rule's disclosure and recordkeeping requirements referenced above will require an average annual burden of 600,000 hours on prescribers, for a total annual labor cost of $25.2 million, and an average annual burden on sellers of 300,000 hours on sellers, for a total annual labor cost of $3 million.

E. Other Duplicative, Overlapping, or Conflicting Federal Rules

The FTC believes there are no other Federal statutes, rules, or policies that would conflict with the proposed Rule. In fact, the proposed Rule reinforces the existing Federal requirement that contact lenses be sold only pursuant to a prescription,[25] and complements the Commission's existing Ophthalmic Practices Rule's requirement that prescribers provide patients with a copy of their eyeglass prescription upon the completion of an eye examination.[26]

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[19] 15 U.S.C. 7601–7610.

[20] 15 U.S.C. 7607.

[21] *See* 12 CFR 121.201 (Small Business Administration's Table of Small Business Size Standards).

[22] 15 U.S.C. 7601.

[23] 15 U.S.C. 7604(b).

[24] 15 U.S.C. 7603(b).

[25] Labeling regulations of the Food and Drug Administration effectively require that contact lenses are sold only pursuant to a prescription. Certain devices, such as contact lenses, when sold without a prescription and without adequate directions for use on the label, are "misbranded" in violation of the Food, Drug & Cosmetics Act. *See* 21 U.S.C. 352(f); 21 CFR 801.109(a)(2).

[26] *See* 16 CFR 456.2(a).

F. Description of Any Significant Alternatives to the Proposed Rule That Would Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered, Such as: (1) Establishment of Differing Compliance or Reporting Requirements or Timetables That Take Into Account the Resources Available to Small Entities; (2) Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements Under the Rule for Such Small Entities; (4) Any Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

The proposed Rule's disclosure and recordkeeping requirements are designed to impose the minimum burden on all affected members of the industry, regardless of size. The Act itself does not allow the Commission any latitude to treat small businesses differently, such as by exempting a particular category of firm or setting forth a lesser standard of compliance for any category of firm. However, the burdens imposed by the Act and proposed Rule on small businesses are likely to be relatively limited. The small businesses affected by the Rule are likely to consist primarily of contact lens prescribers in solo or small practices. Their burdens under the Rule primarily would entail providing contact lens prescriptions to patients or their agents, documenting in exceptional cases the medical reasons for setting a contact lens prescription date of less than one year, and verifying prescriptions for some of their patients who seek to purchase their contact lenses from another seller. Thus, the Commission does not believe that the proposed Rule will impose a significant economic impact on a substantial number of small businesses.

Nonetheless, the Commission specifically requests comment on the question whether the proposed Rule imposes a significant impact upon a substantial number of small entities, and what modifications to the Rule the Commission could make to minimize the burden on small entities. Moreover, the Commission requests comment on the general question whether new technology or changes in technology can be used to reduce the burdens mandated by the Act.

Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide information or comment on the number and type of small entities affected by the proposed Rule. Include in your comments the number of small entities that will be required to comply with the Rule's disclosure and recordkeeping requirements.

2. Please provide comment on any or all of the provisions in the proposed Rule with regard to (a) the impact of the provision(s) (including benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the proposed Rule on small entities in light of the above analysis. In particular, please provide the above information with regard to the disclosure and recordkeeping provisions of the proposed Rule set forth in sections 315.3(a), 315.5(f), and 315.6(b), and describe any ways in which the proposed Rule could be modified to reduce any costs or burdens for small entities consistent with the Act's mandated requirements. Costs to "implement and comply" with the proposed Rule include expenditures of time and money for: any employee training; attorney, computer programmer or other professional time; preparing relevant materials (*i.e.*, prescriptions for release), and recordkeeping.

3. Please describe ways in which the Rule could be modified to reduce any costs or burdens on small entities consistent with the Act's mandated requirements, including whether and how technological developments could reduce the costs of implementing and complying with the proposed Rule for small entities.

4. Please provide any information quantifying the economic benefits of the proposed Rule on the entities covered by the Act, including small entities.

5. Please identify any relevant Federal, State, or local rules that may duplicate, overlap or conflict with the proposed Rule. In addition, please identify any industry rules or policies that require covered entities to engage in business practices that would already comply with the requirements of the proposed Rule.

VIII. Effective Date

The Act takes effect on February 4, 2004,[27] and thus prescribers and sellers of contact lenses, and other parties covered by the Act, have a legal obligation to comply with the Act as of that date. The Act directs the Commission to prescribe rules that will become effective no later than 180 days after the effective date of the Act.[28] The FTC intends to issue final rules with an effective date within the time specified in the Act. The Commission will announce a specific effective date for the Contact Lens Rule when it issues its final rule.

IX. Questions on the Proposed Contact Lens Rule and the Proposed Clerical Amendments to the Ophthalmic Practice Rules

The Commission is seeking comment on various aspects of the proposed Contact Lens Rule, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please submit any relevant data, statistics, or any other evidence, upon which those comments are based.

General Questions

1. Please provide comment on any or all of the provisions in the proposed Contact Lens Rule and the proposed clerical amendments to the Ophthalmic Practice Rules. For each provision commented on please describe (a) the impact of the provision(s) (including benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives.

2. Please provide comment on the effect of the proposed Contact Lens Rule on the costs, profitability, and competitiveness of, and employment in, small entities.

Questions Pertaining to the Proposed Contact Lens Rule

Definitions

3. Section 315.2 defines "business hour." (a) Is this definition sufficiently clear?

(b) What is the impact, including costs and benefits, of defining the term in this way? (c) Should the definition include provisions addressing (i) prescriber vacation days, (ii) State or local holidays, (iii) weekend days, or (iv) other exceptions to normal business hours?

4. Section 315.2 defines "contact lens fitting." (a) Is this definition sufficiently clear? (b) What is the impact, including costs and benefits, of defining the term in this way? (c) Should the term "medically necessary follow-up

[27] The Act becomes effective 60 days after the date of its enactment, which was December 6, 2003. *See* Pub. L. 108–164, section 12 (set out as note under 15 U.S.C. 7601).

[28] 15 U.S.C. 7607.

examinations" be defined, and, if so, how?

5. Section 315.2 defines "contact lens prescription." (a) Is this definition sufficiently clear? (b) What is the impact, including costs and benefits, of defining the term in this way? (c) Should the definition include the prescriber's e-mail address, if any? (d) Should the definition include anything else?

6. Should the Commission define "contact lenses" for purposes of the Act, and, if so, should such definition specifically exclude non-corrective or "cosmetic" contact lenses, because consumers do not need a prescription to purchase them?

7. Section 315.2 defines "direct communication." (a) Is this definition sufficiently clear? (b) What is the impact, including costs and benefits, of defining the term in this way? (c) Is it appropriate to include messages left on telephone answering machines in this definition? (d) Should the definition expressly require, for communication by facsimile or e-mail, the receipt of a confirmation that the communication was successful? (e) Should the definition include any other means of direct communication?

8. Section 315.2 defines "issue date." (a) Is this definition sufficiently clear? (b) Is this term currently defined under State laws relating to contact lens prescriptions? (c) What is the impact, including costs and benefits, of defining the term in this way?

9. Section 315.2 defines "ophthalmic goods." (a) Is this definition sufficiently clear? (b) Is there any reason that ophthalmic goods should be defined differently for purposes of the proposed Contact Lens Rule and the Ophthalmic Practice Rules? (c) What is the impact, including costs and benefits, of defining the term in this way?

10. Section 315.2 defines "ophthalmic services." (a) Is this definition sufficiently clear? (b) Is there any reason that ophthalmic services should be defined differently for purposes of the proposed Contact Lens Rule and the Ophthalmic Practice Rules? (c) What is the impact, including costs and benefits, of defining the term in this way?

11. Section 315.2 defines "prescriber." (a) Is this definition sufficiently clear? (b) What is the impact, including costs and benefits, of defining the term in this way?

12. Section 315.2 defines "private label contact lenses." (a) Is this definition sufficiently clear? (b) What is the impact, including costs and benefits, of defining the term in this way?

Availability of Contact Lens Prescriptions to Patients

13. Section 315.3(a) requires prescribers to release and verify contact lens prescriptions to their patients and to any person designated to act on behalf of the patient. (a) Is this provision sufficiently clear? (b) Is it clear the means by which a prescriber shall provide or verify a contact lens prescription as directed by a third party authorized to act on behalf of the patient?

14. Section 315.3(b) prohibits prescribers from imposing certain requirements or conditions on patients prior to releasing or verifying contact lens prescriptions, including charging them any fee in addition to the fee for an eye examination, fitting, and evaluation to receive a prescription or to have a prescription verified. (a) Do prescribers itemize charges and fees in a manner that distinguishes the amount the patient is paying for an eye examination, fitting, and evaluation from the amount he or she is paying for other goods and services? (b) Are there additional requirements or conditions that should be prohibited to facilitate the release and verification of contact lens prescriptions? (c) What would be the impact, including costs and benefits, of such additional prohibitions?

Limits on Requiring Immediate Payment

15. Section 315.4 limits the circumstances under which a prescriber may require immediate payment for fees for an eye examination, fitting, and evaluation prior to releasing a contact lens prescription. Is this provision sufficiently clear?

Prescriber Verification

16. Section 315.5(a) sets forth the circumstances under which contact lens sellers may sell contact lenses to a patient. (a) Is this provision sufficiently clear, and, if not, what should be clarified? (b) Should the Commission specify, for purposes of paragraph (a)(1), that either the original or a copy of a prescription will suffice? (c) Are there additional requirements the Commission should consider imposing, and what would be the impact, including costs and benefits, of such additional requirements?

17. Section 315.5(b) sets forth the information a contact lens seller must provide to a prescriber when the seller seeks verification of a contact lens prescription. (a) Is this provision sufficiently clear? (b) What is the impact, including costs and benefits, of this provision? (c) Is there any additional information a prescriber needs in order to verify a contact lens prescription? (d) If prescribers receive the name of a contact person at the seller, as well as his or her telephone number and fax number, is this sufficient to enable a prescriber to respond to a verification request within eight (8) business hours as defined in section 315.5(c)?

18. Section 315.5(c) defines the circumstances under which a contact lens prescription is deemed verified. (a) Is this provision sufficiently clear? (b) What is the impact, including costs and benefits, of this provision? (c) Is there a different time period that is similar to eight business hours, as set forth in section 315.5(c)(3), that would give prescribers an adequate period of time during normal office hours to act upon a prescription verification request and still allow sellers to fill customer orders expeditiously? (d) What would be the impact, including costs and benefits, of such other time period? (e) Does the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") limit or otherwise affect prescribers' ability to respond to a verification request pursuant to section 315.5(c) and/or section 315.5(d)?

19. Section 315.5(d) prohibits a contact lens seller from filling a prescription if the prescriber provides timely notice to the seller that the prescription is inaccurate, expired, or otherwise invalid, unless the prescriber has corrected the inaccuracy. (a) Is this provision sufficiently clear? (b) Should the Commission specifically define inaccurate, invalid, and expired prescriptions, and, if so, what should those definitions include? (c) What is the impact, including the costs and benefits, of this provision?

20. Section 315.5(e) prohibits sellers from altering contact lens prescriptions, but allows them to substitute identical contact lenses from the same manufacturer for private label lenses specified on a prescription. (a) Is this provision sufficiently clear? (b) What is the impact, including costs and benefits, of this provision?

21. Section 315.5(f) requires contact lens sellers to maintain for three (3) years records of prescriptions received, direct communications with prescribers to verify prescriptions, and responses from prescribers to these requests for verification. (a) Is this provision sufficiently clear? (b) What is the impact, including costs and benefits, of this provision—particularly with respect to the types of documents and the length of time they must be retained? (c) Are there additional items the Commission should require be maintained? (d) How can the

Commission minimize the burden on sellers imposed by the recordkeeping requirement? (e) Are there technological means available to provide confirmation to the sender that an email has been received by the intended recipient?

Expiration of Contact Lens Prescriptions

22. Section 315.6(a) establishes a minimum contact lens prescription expiration date of one year, subject to an exception based on the medical judgment of a prescriber. (a) Is this provision sufficiently clear? (b) What is the impact, including the costs and benefits, of this provision?

23. Section 315.6(b) sets forth special rules for contact lens prescriptions that expire in less than one year, including a requirement that prescribers document the specific reasons for the medical judgment on which the shorter expiration date is based. (a) Is this provision sufficiently clear? (b) What is the impact, including the costs and benefits, of this provision? (c) In what circumstances would there be legitimate medical reasons for setting a contact lens prescription expiration date of less than one year? (d) How can the Commission minimize the burden on prescribers imposed by the documentation requirement and the three-year time period for retention? (e) For how long do prescribers currently retain medical records for their contact lens patients?

Content of Advertisements and Other Representations

24. Section 315.7 prohibits the representation that contact lenses may be obtained without a prescription. (a) Is this provision sufficiently clear? (b) What is the impact, including the costs and benefits, of this provision? (c) Should the Commission clarify that this provision applies only to contact lenses for which a prescription is required, *i.e.*, that it does not apply to non-corrective or "cosmetic" contact lenses?

Prohibition of Certain Waivers

25. Section 315.8 prohibits prescribers from waiving liability or responsibility for the accuracy of the eye examination. (a) Is this provision sufficiently clear? (b) What is the impact, including the costs and benefits, of this provision?

Enforcement

26. Section 315.9 explains how the Commission will treat violations of the Contact Lens Rule and defines the scope of the agency's enforcement power and jurisdiction. (a) Is this provision sufficiently clear? (b) What is the impact, including the costs and benefits, of this provision?

Questions on the Proposed Clerical Amendments to the Ophthalmic Practice Rules

27. The Commission proposes amending the title of 16 CFR Part 456 to read: Ophthalmic Practice Rules (Eyeglass Rule). What is the impact, if any, of such an amendment and would it effect any substantive change to the Rules?

28. The Commission proposed adding a new paragraph 456.5 to the Ophthalmic Practices Rules to provide a cross-reference to the Contact Lens Rule. What is the impact, if any, of such an amendment and would it effect any substantive change to the Rules?

X. Proposed Contact Lens Rule and Clerical Amendments to the Ophthalmic Practice Rules (16 CFR Part 456)

List of Subjects in 16 CFR Parts 315 and 456

Advertising, Medical devices, Ophthalmic goods and services, Trade practices.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission proposes to amend 16 CFR chapter I as follows:

1. Add a new part 315 to subchapter C to read as follows:

PART 315—CONTACT LENS RULE

Sec.

Authority: Pub. L. 108–164, secs. 1–12; 15 U.S.C. 7601–7610.

§ 315.1 Scope of regulations in this part.

This part, which shall be called the "Contact Lens Rule," implements the Fairness to Contact Lens Consumers Act, codified at 15 U.S.C. 7601–7610, which requires that rules be issued to address the release and verification of contact lens prescriptions. This part specifically governs contact lens prescriptions and related issues. Part 456 of Title 16 governs the availability of eyeglass prescriptions and related issues. 16 CFR part 456 (the Ophthalmic Practice Rules (Eyeglass Rule)).

§ 315.2 Definitions.

Business hour means an hour between 9 a.m. and 5 p.m., during a weekday (Monday through Friday), excluding Federal holidays. For purposes of § 315.5(d)(3), "eight (8) business hours" shall be calculated from the first business hour that occurs after the seller provides the prescription verification request to the prescriber, and shall conclude after eight (8) business hours have elapsed. For verification requests received by a prescriber during non-business hours, the calculation of "eight (8) business hours" shall begin at 9 a.m. on the next weekday that is not a Federal holiday.

Commission means the Federal Trade Commission.

Contact lens fitting means the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required, and such term may include:

(1) An examination to determine lens specifications;

(2) Except in the case of a renewal of a contact lens prescription, an initial evaluation of the fit of the contact lens on the eye; and

(3) Medically necessary follow-up examinations.

Contact lens prescription means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses, including the following:

(1) The name of the patient;

(2) The date of examination;

(3) The issue date and expiration date of prescription;

(4) The name, postal address, telephone number, and facsimile telephone number of prescriber;

(5) The power, material or manufacturer or both of the prescribed contact lens;

(6) The base curve or appropriate designation of the prescribed contact lens;

(7) The diameter, when appropriate, of the prescribed contact lens; and

(8) In the case of a private label contact lens; the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name.

Direct communication, as used in § 315.5, means completed communication by telephone, facsimile, or electronic mail.

Issue date, as used in § 315.6, means the date on which the patient receives a copy of the prescription.

Ophthalmic goods are contact lenses, eyeglasses, or any component of eyeglasses.

Ophthalmic services are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

Prescriber means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration.

Private Label Contact Lenses mean contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers.

§ 315.3 Availability of Contact Lens Prescriptions to Patients

(a) *In general.* When a prescriber completes a contact lens fitting, the prescriber:

(1) Whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and

(2) Shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means.

(b) *Limitations.* A prescriber may not:

(1) Require the purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section;

(2) Require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under paragraph (a)(1) or (a) (2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section; or

(3) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription under paragraph (a)(1) or (a)(2) of this section.

§ 315.4 Limits on Requiring Immediate Payment

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

§ 315.5 Prescriber Verification

(a) *Prescription requirement.* A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is:

(1) Presented to the seller by the patient or prescriber directly or by facsimile; or

(2) Verified by direct communication.

(b) *Information for verification.* When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information through direct communication:

(1) The patient's full name and address;

(2) The contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate;

(3) The quantity of lenses ordered;

(4) The date of patient request;

(5) The date and time of verification request; and

(6) The name of a contact person at the seller's company, including facsimile and telephone numbers.

(c) *Verification events.* A prescription is verified under paragraph (a)(2) of this section only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate by direct communication with the seller;

(2) The prescriber informs the seller through direct communication that the prescription is inaccurate and provides the accurate prescription; or

(3) The prescriber fails to communicate with the seller within eight (8) business hours after receiving from the seller the information described in paragraph (b) of this section.

(d) *Invalid prescription.* If a prescriber informs a seller before the deadline under paragraph (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified under paragraph (c)(2) of this section.

(e) *No alteration of prescription.* A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, a seller may substitute for private label contact lenses specified on a prescription identical contact lenses that the same company manufactures and sells under different labels.

(f) *Recordkeeping requirement.* A seller shall maintain a record of all direct communications referred to in paragraph (a) of this section. Such record shall consist of the following:

(1) For prescriptions presented to the seller: the prescription itself, or the facsimile version thereof, that was presented to the seller by the patient or prescriber.

(2) For verification requests by the seller:

(i) If the communication occurs via facsimile or e-mail, a copy of the verification request, including the information provided to the prescriber pursuant to paragraph (b) of this section, and confirmation of the completed transmission thereof, including a record of the date and time the request was made.

(ii) If the communication occurs via telephone, a telephone log:

(A) Describing the information provided pursuant to paragraph (b) of this section;

(B) Setting forth the date and time the request was made; and

(C) Indicating how the call was completed.

(D) The seller also must retain copies of its telephone bills.

(3) For communications from the prescriber, including prescription verifications:

(i) If the communication occurs via facsimile or e-mail, a copy of the communication and a record of the time and date it was received.

(ii) If the communication occurs via telephone, a telephone log describing the information communicated and the date and time that the information was received.

(4) The records required to be maintained under this section shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

§ 315.6 Expiration of contact lens prescriptions.

(a) *In general.* A contact lens prescription shall expire:

(1) On the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) Not less than one year after the issue date of the prescription if such State law specifies no date or specifies a date that is less than one year after the issue date of the prescription; or

(3) Notwithstanding paragraphs (a)(1) and (2) of this section, on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) *Special rules for prescriptions of less than one year.* (1) If a prescription expires in less than one year, the specific reasons for the medical judgment referred to in paragraph (a)(3) of this section shall be documented in the patient's medical record with sufficient detail to allow for review by a qualified professional in the field.

(2) The documentation described in paragraph (b)(1) of this section shall be maintained for a period of not less than three years, and it must be available for inspection by the Federal Trade Commission, its employees, or its representatives.

(3) No prescriber shall include an expiration date on a prescription that is less than the period of time that he or she recommends for a reexamination of the patient that is medically necessary.

§ 315.7 Content of advertisements and other representations.

Any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

§ 315.8 Prohibition of certain waivers.

A prescriber may not place on a prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

§ 315.9 Enforcement.

Any violation of this part shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices, and the Commission will enforce this part in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

§ 315.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 456—AMENDED

2. The authority citation for part 456 continues to read as follows:

Authority: 15 U.S.C. 57a; 5 U.S.C. 552.

3. Revise the title of part 456 to read as follows:

PART 456—OPHTHALMIC PRACTICE RULES (EYEGLASS RULE)

4. Add a new § 456.5 to read as follows:

§ 456.5 Rules applicable to prescriptions for contact lenses and related issues.

Rules applicable to prescriptions for contact lenses and related issues may be found at 16 CFR part 315 (Contact Lens Rule).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–2235 Filed 2–3–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 456

[RIN 3084–AA80]

Ophthalmic Practice Rules

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has completed its regulatory review of the Ophthalmic Practice Rules ("Rules"), which require, among other things, that eye care practitioners provide patients with a copy of their eyeglass prescription upon completion of an eye examination. Pursuant to this review, the Commission has determined to retain the Rules in their current form. This document discusses the comments received in response to the Commission's request for public comment, analyzes the effect of the enactment of the Fairness to Contact Lens Consumers Act, 15 U.S.C. 7601–7610, and announces the Commission's decision to retain the Rules.

EFFECTIVE DATE: February 4, 2004.

FOR FURTHER INFORMATION CONTACT: Kial Young, (202) 326–3525, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 601 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of its systematic review of its Rules and Guides to determine their effectiveness and impact, the Commission published a request for public comment in the **Federal Register** on April 3, 1997, seeking comments about the overall costs and benefits of the Ophthalmic Practice Rules and related questions.[1] The Commission received comments from numerous parties, including: (1) Associations representing various segments of the industry and professions, including the American Optometric Association, the Opticians Association of America, the National Association of Optometrists and Opticians, the American Academy of Ophthalmology, individual professionals, and mail-order sellers of contact lenses; (2) state attorneys general, state optometry boards, and a United States Congressman; and (3) consumers.[2]

In general, the comments primarily addressed two broad issues: (1) Whether the current Rules, which require the release of eyeglass prescriptions to patients upon completion of an eye examination, should be retained, repealed, or modified; and (2) whether the Rules' eyeglass prescription release requirement ("eyeglass prescription release rule") should be extended to require the release of contact lens prescriptions.

With respect to the first issue, the Commission has determined to retain the Rules in their current form. As to the second issue, while the Commission's regulatory review was pending, Congress enacted and the President signed the Fairness to Contact Lens Consumers Act, which requires that prescribers release contact lens prescriptions to their patients. The FTC is publishing a Notice of Proposed Rulemaking today seeking comment on a proposed rule to implement the Act, including a contact lens prescription release requirement. Accordingly, the Commission concludes that it is not necessary to address during this regulatory review whether to extend the Ophthalmic Practice Rules to mandate that contact lens prescriptions be released.

This document first describes the requirements and the background of the current Ophthalmic Practice Rules. It then summarizes the comments received regarding whether the eyeglass prescription release rule should be retained, eliminated, or changed, and explains the Commission's determination to retain that rule in its present form. Finally, this document discusses additional issues relating to this regulatory review of the Rules.

II. Description and Background of Ophthalmic Practice Rules

The Ophthalmic Practice Rules require an eye care practitioner (an optometrist or ophthalmologist) to provide a patient, immediately after completion of an eye examination, with a free copy of his or her eyeglass prescription (the "eyeglass prescription release rule"). The Rules also prohibit an eye care practitioner from conditioning the availability of an eye examination on a requirement that the patient agree to purchase ophthalmic goods from the practitioner. The Rules further prohibit an eye care practitioner from making certain disclaimers and waivers of liability.

In promulgating the original Rules in 1978, the Commission found that many consumers were being deterred from comparison shopping for eyeglasses because eye care practitioners refused to release prescriptions, even when requested to do so, or charged an additional fee for the release of a prescription.[3] At that time, prohibitions and restrictions on advertising of ophthalmic goods and services were commonplace. Indeed, eye care practitioner advertising, especially price advertising, was restricted in 49 states, either by governmental or private regulation.[4] Without such advertising, consumers generally knew little about their options in purchasing eye exams and eyeglasses, including that they have the option of purchasing them separately. The Rules therefore include a requirement that eye care practitioners automatically release a copy of the prescription regardless of whether the patient requests it.[5]

The Commission previously has considered modifying the eyeglasses prescription release rule. In 1985, the agency published a notice of proposed rulemaking that invited comments on whether the rule should be modified or repealed.[6] In 1989, the FTC decided to retain the rule, because there was still significant non-compliance with the rule and a continued lack of consumer awareness about their ability to obtain their prescription and purchase eyeglasses separately.[7]

III. Eyeglass Prescription Release Rule

A. Summary of Comments

1. Costs and Benefits of Eyeglass Prescription Release Rule

In connection with the Commission's review of its Ophthalmic Practices Rules, the April 1997 **Federal Register** Notice requested comments on whether the eyeglass prescription release rule should be retained, modified, or eliminated. Many commenters support retention of that requirement, including

[1] Request for Public Comments, 62 FR 15865 (Apr. 3, 1997).

[2] The comments have been filed on the Commission's public record as Document Nos. B21940700001, B21940700002, *et seq.* The comments are cited in this document by the name of the commenter, a shortened version of the comment number (the last one to three digits), and the relevant page(s) or attachments of the comment. All written comments submitted are available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580.

[3] Advertising of Ophthalmic Goods and Services, Statement of Basis and Purpose and Final Trade Regulation Rule, 43 FR 23992, 23998 (June 2, 1978) (hereinafter "1978 Statement of Basis and Purpose").

[4] *Id.* at 23994.

[5] Ophthalmic Practice Rules, Final Trade Regulation Rule, 54 FR 10285, 10299, 10303 (Mar. 13, 1989) (hereinafter "1989 Statement of Basis and Purpose") (citing Ophthalmic Practice Rules: State Restrictions on Commercial Practice, Oct. 1986, at 251–52).

[6] Ophthalmic Practice Rules; Proposed Trade Regulation Rule; Notice of Proposed Rulemaking, 50 FR 598, 602–603 (Jan. 4, 1985).

[7] 1989 Statement of Basis and Purpose, *supra* note 5, 54 FR at 10303.

the attorneys general of 18 states ("State Attorneys General"),[8] the National Association of Optometrists and Opticians ("NAOO") (a trade association whose members include many large chain optical firms),[9] Opticians Association of America ("OAA"),[10] Opticians Association of Georgia ("OAG"),[11] individual opticians,[12] the Illinois Association of Ophthalmology,[13] and mail-order sellers of contact lenses, including 1–800 Contacts[14] and Lens Express.[15] Many consumers also filed comments in support of the eyeglass prescription release rule.[16] These commenters generally argue that the rule continues to benefit consumers by allowing them to purchase eyeglasses from sellers other than their eye care practitioner, thereby increasing competition among eyeglass sellers and lowering the price of eyeglasses. The comments also state that the cost to eye care practitioners of providing an eyeglass prescription to their patients is minimal.[17]

For example, the NAOO contends that the rule has "contributed immensely to creating a pro-consumer, pro-competitive environment in much of the eyewear sector today, generating not only lower prices for all consumers, but enormous product, technological, managerial and service innovations as well."[18] Similarly, the State Attorneys General said that the rule has provided consumers with a wide variety of alternative suppliers at varying price points and service levels, and has saved consumers money.[19] Supporters of retaining the rule also argue that lower prices have resulted in increased accessability to eyewear.[20] Other commenters, including consumers, expressed similar views.[21]

On the other hand, the American Optometric Association ("AOA"),[22] the California Optometric Association ("COA"),[23] the Texas Optometry Board,[24] and others urge the Commission to rescind the eyeglass prescription release rule. According to these commenters, increased competition and advertising in the eyecare marketplace now enable consumers to shop among a wide variety of eyeglass sellers, and have made consumers aware of the benefit to them of obtaining their eyeglass prescriptions.[25] These commenters further contend that giving a prescription to a patient who does not want one imposes unnecessary costs on eye care practitioners, such as preparing unnecessary paperwork and expending their time.[26]

2. Release Upon Request

The request for public comment also asked whether, if the eyeglass prescription release rule is retained, the Commission should modify the rule to require an eye care practitioner to release a prescription only if the patient requests it, rather than releasing it automatically.

Most commenters who support retention of the eyeglass prescription release rule also urge the Commission to retain the requirement that the prescription be released automatically. Commenters, such as OAA and Lens Express, assert that many consumers still are not aware that they can obtain their eyeglass prescription.[27] OAA cites its 1997 survey showing that 68.5% of consumers are not aware of the Commission's eyeglass prescription release rule.[28] In addition, some consumers filed comments stating that they did not request their eyeglass prescription from their eye care practitioners because they did not know they were entitled it.[29]

Commenters such as OAA also assert that, absent the automatic release requirement, consumers may be intimidated or coerced by their eye care practitioner into not requesting their prescription.[30] OAA further asserts that more ophthalmologists are now dispensing eyewear, and that many consumers are intimidated if a doctor says that you should buy eyewear from him or her.[31]

Several commenters also contend that there is still significant non-compliance with the rule by eye care practitioners,[32] especially the automatic release requirement.[33] OAA cites a survey conducted in March 1997 that showed, according to OAA, that 29.3% of patients did not receive their prescriptions and 10.1% were refused their prescriptions when they requested them.[34] In addition, anecdotal evidence in the record claims that the overwhelming majority of eye doctors who dispense eyewear do not automatically give patients their eyeglass prescriptions.[35]

By contrast, commenters who argue for repeal of the eyeglass prescription release rule generally also urge the agency to adopt an "upon request" standard if the rule is retained. According to AOA, many, if not most, patients want to purchase their eyeglasses from the eye care practitioners providing their eye

[8] Attorneys General, #118. The comment was submitted by the Attorneys General of Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Illinois, Iowa, Maryland, Michigan, Minnesota, New York, Ohio, Pennsylvania, West Virginia and Wisconsin. The Attorney General of Nevada subsequently sent a letter joining the other states in this comment.

[9] NAOO, #119.

[10] OAA, #120. The National Academy of Opticianry also filed a comment, #115, stating that it supports the positions taken by Opticians Association of America.

[11] OAG, #60. *See also* Society of Dispensing Opticians of Kentucky, #28. Many individual opticians filed comments substantially similar to the OAG comment. *See, e.g.*, E. Carter, #45; D. Drake, #55; All About Vision Center, #56; S. Sanford, #62; Oldham's Opticians, #65; Price and Wood Opticians, #72.

[12] *See, e.g.*, H. Moyer, #9; Optical Fashions, #75; Professional Opticians, #31.

[13] Illinois Association of Ophthalmology, #66 at 1–2.

[14] 1–800 Contacts, #70 at 1.

[15] Lens Express, #113 at 3–4.

[16] *See, e.g.*, A. King, #2; C. Bentley, #5; N. Fraby, #6; P. Guidoni, #12; J. Ruffino, #14; D. Murphy, #16; M. Walker, #17; C. Walker, #18; A. McKinley, #19; A. Cantrell, #21; T. Block, #22; B. Madewell, #23; T. Yancy, #24; E. Sharp, #43; K. Kinsey, #53.

[17] *See, e.g.*, NAOO, #119 at 9; OAA, #120 at 4; Illinois Association of Ophthalmology, #66 at 2.

[18] NAOO, #119 at 8–9 (quoting Regina Herzlinger, Market-Driven Health Care (1997)).

[19] Attorneys General, #118, at 2, 6.

[20] NAOO, #119 at 7–9. Other commenters agreed. *See, e.g.*,1–800 Contacts, #70 at 2.

[21] *See, e.g.*, Lens Express, #113 at 6; OAA, #120 at 1; G. Gac, #4 (consumer freedom of choice); D. Ingraham, #44 (same); W. Schaap, #3 (same); J. Lamet, #1 (price competition); E. Bode, #25 (same); F. Bassett, #7 (lack of awareness of right to obtain prescription); N. Simonetti, #13 (same); consumer #15 (consumer right to prescription); E. Bode, #25 (same).

[22] AOA, #111.

[23] COA, #112, at 1–2.

[24] Texas Optometry Board, #122.

[25] AOA, #111 at 1–2; COA, #112 at 4.

[26] COA, #112 at 7.

[27] OAA, #120 at 9–10; Lens Express, #113 at 7.

[28] OAA, #120 at 9–10. The survey asked consumers: "Previous to reading this form were you aware of the Prescription Release Rule?"

[29] *See, e.g.*, F. Bassett, #7; N. Simonetti, #13; *see also* K. Kinsey, #53 (many consumers, especially the elderly, do not know they can shop around).

[30] OAA, #120 at 1, 9.

[31] *Id.* at 7–8.

[32] *See, e.g.*, OAA, #120 at 9.

[33] Lens Express, #113 at 4–5; OAA, #120 at 9. In addition, several consumers commented that they had not received their eyeglass prescription as required by the eyeglass prescription release rule. *See, e.g.*, D. Ingraham, #44 (consumer unable to get copy of eyeglass prescription); J. Bassett, #7 (eye doctor did not release prescription until after he purchased eyeglasses; he did not ask); N. Simonetti, #13 (consumer has never been given prescription and did not ask because he did not know of his right to obtain prescription).

[34] OAA, #120 at 9. OAA did not provide any further details about the survey or its methodology.

[35] Paul Klein, O.D., "Forcing ODs to Release CL Prescription Does No Good," *Vision Monday*, Apr. 3, 1995, at 46, cited in Lens Express, #113 Exhibit 1.

Commenters raise some additional reasons for retaining the rule in its current form. For example, the OAA states that if the rule is cut back, many small opticians will go out of business. OAA, #120 at 11. OAA further notes that managed vision care and third-party insurance programs have encouraged one-stop shopping by locating dispensaries and practitioners in close proximity. These trends, OAA asserts, have limited opportunities for opticians and limited freedom of choice for consumers. OAA, #120 at 7–8.

examination, or from an affiliated optical chain. Commenters supporting this revision of the rule contend that patients generally are aware of their right to obtain their eyeglass prescriptions,[36] and that those who want their prescriptions routinely ask for and receive them. As such, these commenters argue, the automatic release of eyeglass prescriptions to all patients, including those who do not want them, is inefficient and wasteful.[37]

One commenter, the Society for Excellence in Eyecare ("SEE"), a professional society of clinical ophthalmic surgeons, urged the Commission to modify the rule to require physicians to provide an eyeglass prescription only when appropriate in the physician's opinion or at the request of the patient. SEE suggests that many patients do not need a new prescription each time they visit an eye doctor because their prescription has not changed. According to SEE, giving patients a prescription under such circumstances probably leads many patients to believe that the prescription must be filled.[38]

3. Overlap or Conflict With Other Laws

The request for public comment also asked for comments on whether the Ophthalmic Practice Rules overlap or conflict with other federal, state, or local laws or regulations. Several commenters respond that the eyeglass prescription release rule overlaps with or duplicates laws in some states, such as California and Texas, which already require the release of eyeglass prescriptions.[39] These commenters state that, at least as to those particular states, the existence of the state law makes the federal requirement unnecessary. OAA comments that optometric regulations in seven states conflict with the eyeglass prescription release rule's automatic release requirement by requiring the release of eyeglass prescriptions only upon the request of the patient. OAA further states that some of these state regulations make the prescription release contingent upon a patient's fulfillment of all financial obligations. Finally, OAA states that Oklahoma's optometric regulations are inconsistent with the disclaimer provisions in the Rules.[40]

B. Commission's Determinations Regarding Eyeglass Prescription Release Rule

The Commission has determined not to initiate a proceeding to repeal the eyeglass prescription release requirement. Some eye care practitioners may release prescriptions upon request in the absence of a federal release requirement. The evidence in the record, however, suggests that some eye care practitioners continue to refuse to release eyeglass prescriptions, even though this conduct has been unlawful under the Rules for nearly twenty-five years. If the eyeglass prescription release rule were eliminated, additional eye care practitioners might refuse to release eyeglass prescriptions so that they could receive the economic benefits from inducing patients to purchase both an eye exam and eyeglasses from them. Because release might not occur in the absence of a federal release requirement and because release of prescriptions enhances consumer choice at minimal compliance cost to eye care practitioners, the FTC has decided to retain the eyeglass prescription release rule.

The Commission also has decided not to commence a proceeding to modify the rule so that eye care practitioners are only required to release eyeglass prescriptions upon request. The comments submitted indicate that some consumers still are not aware of their right under the rule to obtain their eyeglass prescription from their eye care practitioner. In the absence of automatic release, these consumers may not know to ask for their prescription, or their eye care practitioner may discourage them from requesting it. With automatic release, these consumers will receive their prescription so that they can comparison shop among eyeglass sellers if they choose to do so. The record also shows that the burden on eye care practitioners in releasing prescriptions is minimal. Moreover, the recently enacted Fairness to Contact Lens Consumers Act provides for automatic release of contact lens prescriptions, and thus maintaining automatic release of eyeglass prescriptions provides consistency between the two release requirements. In light of all these factors, the FTC declines to start a proceeding to amend the rule to require release of eyeglass prescriptions only upon request.

Finally, the Commission concludes that the eyeglass prescription release rule does not conflict with other laws. The rule does not conflict with the optometric regulations cited by OAA, because eye care practitioners can comply with both the federal and the state requirements. The state laws cited by OAA require eye care practitioners to release eyeglass prescriptions upon request. These laws do not prohibit eye care practitioners from automatically releasing eyeglass prescriptions, as required by the rule. Moreover, there is no information in the record that any states are interpreting their laws in such a way as to conflict with application of the federal requirements.[41]

C. Other Issues Related to Ophthalmic Practice Rules

1. Waivers and Disclaimers (16 CFR 456.2(d))

The request for public comment on the Ophthalmic Practice Rules also asked whether any changes should be made to the prohibition in Section 456.2(d) against the use of certain waivers or disclaimers of liability by eye care practitioners, or to the Commission's interpretation of that provision.[42]

Section 456.2(d) prohibits eye care practitioners from placing on an eyeglass prescription, requiring a patient to sign, or delivering to a patient, any waiver or disclaimer of liability for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller. Section 456.2(d) was originally promulgated because disclaimers "may have the effect of making consumers erroneously believe that other dispensers are not qualified to dispense their eyeglasses and discouraging consumers from shopping around." [43]

Section 456.4 states that eye care practitioners are not liable under the Rules for the ophthalmic goods and services that another seller has dispensed. The FTC has interpreted Section 456.2(d) consistent with Section 456.4 to allow eye care practitioners to make truthful and non-misleading statements on prescriptions that sellers of ophthalmic goods and services are

[36] The Illinois Association of Ophthalmology, while supporting the rule as is, states that most consumers are aware that they are entitled to receive their eyeglass prescriptions. Illinois Association of Ophthalmology, #66 at 2.

[37] AOA, #111 at 2; COA, #112 at 2–3, 5.

[38] SEE, #82. SEE did not submit, however, and the record does not contain, any evidence indicating that automatic release of eyeglass prescriptions in fact leads consumers to fill their prescriptions unnecessarily, or otherwise causes consumer injury.

[39] *See, e.g.*, COA, #112 at 3 (California); Texas Optometry Board, #122.

[40] OAA, #120 at 5–6.

[41] The provision of the Oklahoma regulation that, according to OAA, violates the Rules' disclaimer provision, states that "the examining optometrist or physician shall not be responsible for the accuracy of the optical materials furnished by another person." As discussed in Part III.C.1., *infra*, this regulation does not conflict with any portion of the Commission's Rules.

[42] The **Federal Register** Notice further specifically asked what problems, if any, the current requirement, or its interpretation, has caused, and how any such problems could be remedied.

[43] 1978 Statement of Basis and Purpose, *supra* note 3, 43 FR at 23998.

responsible for harm caused by the products they sell. For example, an eye care practitioner may state on a prescription that "the person who dispenses your eyeglasses is responsible for their accuracy." The eye care practitioner, however, may not include a waiver or disclaimer of its own liability along with such a statement.[44]

COA requests that the Commission amend the Rules to allow disclaimers of liability for the accuracy of the ophthalmic goods and services dispensed by another seller.[45] COA contends that it is unlikely under state tort law that an eye care practitioner would be held liable for the negligence or breach of warranty of an independent third party who provided ophthalmic goods to the practitioner's patients. As such, COA asserts that a disclaimer of liability provides truthful and useful information to the patient, alerting the consumer to the possibility of a dispute concerning such liability.[46] The AOA similarly requests that the Rule be amended to permit eye care practitioners to include on prescriptions truthful and non-misleading disclaimers of liability for the actions of sellers of ophthalmic goods and services.

OAA also argues that the Rules should be amended to require that eye care practitioners affirmatively state that they are liable for errors in prescriptions even if another seller, such as an optician, fills the prescription. OAA believes that in the absence of such a statement, some eye care practitioners may mislead their patients into believing that the eye care practitioner will not be liable in these circumstances.[47] The OAG and several opticians filed similar comments, stating that eye care practitioners often include statements on prescriptions implying that if a seller other than the eye care practitioner fills the prescription, the goods or services sold may be inferior. These commenters want the Rules revised to limit the statements made on prescriptions to prevent statements that imply that the goods or services that non-eye care practitioners sell are inferior.[48]

The Commission has determined to retain Section 456.2(d) in its current form. No evidence was submitted that indicates that its restrictions on the use of disclaimers and waivers are no longer needed to prevent harm to consumers. In addition, because of its long-standing and consistent interpretation that the Rules allow eye care practitioners to make truthful and non-misleading statements that other sellers are liable for the harm their own products cause, it is not necessary to amend the Rules to explicitly permit such statements. Finally, the Commission believes that case-by-case law enforcement under section 5 of the FTC Act is a more effective means than rulemaking of addressing any false or misleading statements by eye care practitioners on prescriptions as to their liability for prescription errors or the quality of other sellers' goods and services.

2. Other Proposals

The OAA also recommends that the Commission amend the Ophthalmic Practice Rules to prohibit the use of expiration dates for eyeglass prescriptions, with exceptions for specific, well-defined medical reasons. OAA states that practitioners currently use arbitrarily determined and unjustifiable expiration dates, such as six months or one year, to deter consumers from using their eyeglass prescriptions.[49]

The Commission declines to initiate a proceeding seeking to amend the Rules to set expiration dates for eyeglass prescriptions. As explained above, the purpose of the Rules is to prohibit acts and practices that deter consumers from comparison shopping for eyeglasses. There is no evidence in the record that eye care practitioners are using expiration dates as a means of impeding the ability of consumers to purchase eyeglasses from other sellers or otherwise causing consumer injury. In the absence of such evidence, the Commission has decided not to consider setting expiration dates for eyeglass prescriptions.[50]

IV. Conclusion

For the foregoing reasons, the Commission has determined to retain the Ophthalmic Practices Rules in their current form.

List of Subjects in 16 CFR Part 456

Advertising, Medical devices, Ophthalmic goods and services, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–2234 Filed 2–3–04; 8:45 am]

BILLING CODE 6750–01–P

[44] 1989 Statement of Basis and Purpose, *supra* note 5, 54 FR at 10299. The Commission's interpretation of this provision originally was set forth at 43 FR 46296–46297 (Oct. 6, 1978).

[45] COA, #112 at 6.

[46] COA, #112 at 6.

[47] OAA, #120 at 13. OAA does not address the point made by the AOA and COA.

[48] *See, e.g.*, OAG, #60; E. Carter, #45; D. Drake, #55; All About Vision Center, #56; Price and Wood Opticians, #72.

[49] OAA, #120 at 3–4.

[50] The Commission notes that Congress has established a minimum expiration date of one year for contact lens prescriptions, with an exception for cases in which medical reasons warrant a shorter time period. *See* 15 U.S.C. 7604. However, different considerations may apply to contact lenses than to eyeglasses, and, in any event, the record in this regulatory review does not indicate consumer injury that would support a rulemaking proceeding by the Commission to set an expiration date for eyeglass prescriptions.

Federal Register

Wednesday,
February 4, 2004

Part VII

The President

Proclamation 7754—American Heart Month, 2004

Federal Register
Vol. 69, No. 23
Wednesday, February 4, 2004

Presidential Documents

Title 3—

The President

Proclamation 7754 of February 2, 2004

American Heart Month, 2004

By the President of the United States of America

A Proclamation

Heart disease is the leading cause of death in the United States. It affects men and women of every age and race. During American Heart Month, we encourage all Americans to join the fight against heart disease and to learn more about how to prevent it.

More than 64 million Americans suffer from one or more forms of cardiovascular disease, including high blood pressure, coronary heart disease, congestive heart failure, stroke, and congenital heart defects. Many of the risk factors that can lead to heart disease, such as high blood pressure, high blood cholesterol, and diabetes, can be prevented or controlled. Research has shown that men and women who lead healthy lifestyles, including making healthy food choices, getting regular exercise, maintaining a healthy weight, and choosing not to smoke or drink excessively, can significantly decrease their risk of heart disease.

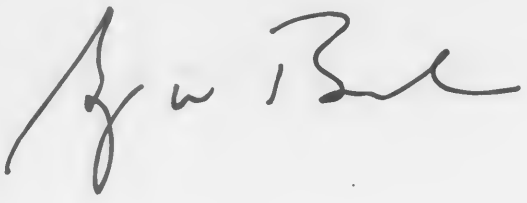
Heart disease is responsible for the deaths of one in three women in the United States. To make women more aware of the danger of heart disease, the National Heart, Lung, and Blood Institute of the National Institutes of Health has joined with the Department of Health and Human Services and other national organizations to launch a nationwide campaign called "The Heart Truth." This important campaign encourages women to learn more about heart health, to lead healthier lives, and to talk with their doctors about their risk for developing heart disease.

During American Heart Month, I urge all Americans to learn more about heart health and to reduce their risk factors for serious heart conditions. By making healthy choices, we can live longer and better lives.

In recognition of the important ongoing fight against heart disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim February 2004 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating heart disease.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of February, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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